

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

<b>Complaint no.</b>	:	<b>951 of 2021</b>
<b>Date of filing complaint:</b>		<b>15.02.2021</b>
<b>First date of hearing</b>	:	<b>20.04.2021</b>
<b>Date of decision</b>	:	<b>15.03.2022</b>

Arvind Kumar Bhadani HUF R/o: G-5, Lajpat Nagar-3, New Delhi-110024	<b>Complainant</b>
Versus	
M/s Spaze Towers Private Limited R/o: Spazedge, Sector 47, Gurgaon Sohna Road, Gurgaon, Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
<b>APPEARANCE:</b>	
Sh. Vishal Bhadani (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 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 25.03.2011 valid up to 24.03.2019
5.	Name of licensee	Smt. Mohinder Kaur and Ashwini Kumar
6.	RERA Registered/ not registered	<b>Registered</b> <b>vide registration no. 385</b> <b>of 2017 dated 14.12.2017</b>
	RERA Registration valid up to	<b>31.06.2019</b>
	Extended vide extension no.	<b>06 of 2020 dated</b> <b>11.06.2020</b>
	Extension no. valid up to	<b>30.12.2020</b>
7.	Allotment letter	27.03.2012 (page 28 of complaint)
8.	Unit no.	Unit no. 184, floor 18, tower B2 admeasuring 1745 sq.ft. (page 28 of complaint)
9.	New Unit no.	164, 16 <sup>th</sup> floor, tower B2 admeasuring 1745 sq.ft (page 62 of complaint)

10.	New area	1918sq.ft. vide letter of offer of possession (page 78 of reply)
11.	Date of approval of building plan	06.06.2012 [page 70 of the reply]
12.	Date of execution of builder buyer agreement	07.08.2012 [Page 32 of the complaint]
13.	Total sale consideration	Rs. 85,49,922/- (as per statement of account dated 06.07.2021 at page 93 of reply)
14.	Total amount paid by the complainant	Rs. 76,69,772/- (as per statement of account dated 06.07.2021 at page 95 of reply)
15.	Payment plan	Construction linked payment plan (Page 29 of the complaint)
16.	Due date of delivery of possession <i>Clause 3(a): The developer proposes to hand over the possession of the apartment within a period of thirty-six (36) 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</i>	07.02.2016 Calculated from date of execution of BBA <b>(Grace period is allowed)</b>
17.	Offer of possession	01.12.2020 (page 78 of reply)
18.	Occupation Certificate	11.11.2020 [page 85 of reply]
19.	Delay in delivery of possession from the due date i.e., 07.02.2016 till the date of offer of possession plus two months i.e., 01.12.2020 + 2 months (01.02.2021)	4 years 11 months 25 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. 3,91,287/- towards compensation for delay in possession.

Rs. 43,625/- towards GST  
input credit details**B. Facts of the complaint:**

3. The present complaint pertains to a situation whereby the complainant had initially booked an apartment bearing no. 184, on the 18<sup>th</sup> floor, in tower B2, admeasuring 1,745 sq. ft. in the project being developed by the respondent, namely, "Spaze Privy At4" located at Sector-84, Gurgaon, Haryana. Based on the elaborate representations and promises made by the respondents about the project including the quality, standard and the exquisite facilities that would be offered. The respondent issued an allotment letter dated 27.03.2012 to the complainant allotting the unit no. 184 on the 18<sup>th</sup> floor in tower B2. The complainant had anticipated that the respondent would soon also execute the detailed buyer's agreement for purchasing the apartment. However, the complainant continued to chase the respondent and eventually after a delay of about 6 (six) months from the date of booking, the respondent executed a detailed buyer's agreement dated 07.08.2012 with the complainant. It is submitted that the agreement was filled with one-sided and arbitrary terms and conditions. For instance, as per clause 3(c)(iv) of the agreement, in the event of delay by the respondent in offering possession of the apartment to the complainant, the respondent was obligated to pay delayed compensation merely at the rate Rs. 5/- per sq. ft. per month; whereas as per clause 1.2(k), in the event the complainant failed to make payment of any installment, the respondent, at their sole and absolute discretion, were entitled to charge interest at an

enormous rate of 18% per annum compounded quarterly. However, the complainant could not negotiate or dispute any of them since any dispute or disagreement thereof would have led to cancellation of the apartment and forfeiture of the earnest money i.e. 15% of the basic selling price. As per clause 3(a) of the agreement, the possession of the apartment was to be offered within a period of 36 months from the date of approval of the building plan or the date of execution of the agreement, whichever is later along with a grace period of 6 (six) months. Since the building plan was approved on 06.06.2012, the date of the agreement is of the later date and therefore, the date of possession of the apartment commences from 07.08.2012. Hence, the respondent was obligated to offer possession of the apartment by August 2015 or latest by February 2016 (inclusive of the grace period).

4. The complainant diligently paid each instalment as per the demands raised by the respondent and was assured that the project would be completed within the time promised. However, closer to the due date of delivery of possession, through letter dated 06.05.2015 the respondent informed the complainant that due to changes/alterations in few towers, the apartment which had initially been allotted to the complainant would no longer be available and a new allotment was made for apartment no. 164 on the 16<sup>th</sup> floor of the same tower. It was explicitly stated in the letter that the terms of the allotment would remain the same as for the previous allotment.
5. Through meetings and telephonic conversations, the complainant sought regular updates from the respondent with respect to the

progress of construction work of the project and was assured that the same was progressing as per schedule and that possession of the apartment would be offered within the time promised. Till date the complainant has paid and the respondent has collected an enormous amount of Rs. 76,69,772/- towards the construction of the apartment. However, the respondent failed to offer possession of the apartment to the complainant within the time promised i.e. by August 2015 or even by February 2016 or even within a reasonable period thereafter. The complainant relentlessly chased the respondent inquiring about the status of the completion of the project and handover of possession of the apartment to the complainant, but no satisfactory response was provided. After several calls and meetings, since no response was received regarding the possession of the apartment, therefore the complainant addressed an email dated 10.08.2019 inquiring about the delay that had been caused in completing the project and as to how the respondent was going to compensate the complainant for the gross delay. As anticipated, no response was received and the complainant issued reminder emails dated 12.08.2019, 14.08.2019, 25.08.2019, 30.11.2019 and 14.02.2020. It was on 18.02.2020 that the respondent acknowledged the numerous emails sent by the complainant and stated that it would soon handover possession of the apartment and malafidely sought to camouflage the delay by stating that the delay was beyond its control without any evidence or specific reasons which resulted in this gross delay. It is therefore clear that none of the circumstances resulting in this inordinate delay were beyond the control of the respondent. Thereafter, yet again the complainant was constrained



to address numerous emails and reminders to the respondent on 19.02.2020, 12.08.2020, 12.11.2020 and 05.12.2020, but no response was received.

6. After an inordinate delay of more than 4 years from the promised date of possession, the respondent offered possession of the apartment *vide* email dated 05.12.2020 enclosing a letter dated 01.12.2020 and raised a final demand of Rs. 9,62,287/- and failed to address the grievances of the complainant raised through countless emails. Thereafter, on a perusal of the computation of the final demand as mentioned in the letter of offer of possession, the complainant observed certain discrepancies such as rate of GST, miscellaneous charges, proof and calculation of increase in super area etc. and observed that the final demand did not provide detailed calculations. In this regard, the complainant had addressed an email on 10.12.2020 inquiring about the charges that had been levied on the complainant and requesting for a detailed statement of account with a copy of the occupation certificate and photographs of the project. Yet again, no response has been received and the respondent has failed to provide any satisfactory response or share a copy of the occupation certificate or photographs till date. It is further submitted that as per the details available on the website of DTCP, Haryana, no occupation certificate has been received for the project and if that is so, the possession offered by the respondent is entirely sham and bogus and has been done only to wriggle out of its obligations to compensate the complainant for the inordinate delay and years of harassment suffered by the complainant. This is further evident from the fact that the respondent has been unable to provide the

information as sought by the complainant and has failed to resolve his grievances.

7. It is stated that till date the complainant has paid an enormous amount of Rs. 76,69,772/- to the respondent towards the sale consideration of the apartment. It is submitted that the respondent was liable to offer possession of the apartment by August 2015 or latest by February 2016; however, the respondent miserably failed to complete the project and offer possession of the unit within the time promised under the agreement. The possession of the unit has been offered by the respondent after an inordinate delay of more than 4 (four) years only on 05.12.2020. Despite the miserable delay that has been caused by the respondent in delivering the project, the complainant seeks possession of his apartment, habitable and complete in all respects as per the agreement along with compensation for the said delay. It is submitted that none of the circumstances resulting in this miserable delay were beyond the control of the respondent and that it was solely due to its own poor management and deficiencies that the project has been delayed, including failure of the respondent to address any of the grievances raised by the complainant.
8. It is submitted that the respondent has failed to offer possession of the apartment to the complainant within the time promised under the agreement i.e. by August 2015 or by February 2016 (inclusive of the grace period) or even within a reasonable period thereafter. It is furthermore submitted that none of the circumstances that have resulted in this inordinate delay, were and are, beyond the control of the respondent. The complainant feels cheated because it is apparent that the promises made by the respondent were



nothing but false and dishonest. The complainant has been facing irreparable loss and damage as he has already paid an amount of Rs. 76,69,772/- to the respondent till date and even after having complied with each demand of the respondent, they have failed to offer possession of the apartment to the complainant within the time promised. It is however stated that in the event, no occupation certificate has been received by the respondent then not only is the offer of possession invalid and illegal but the respondent would continue to be liable to pay compensation to the complainant for the delay till the date of actual offer of possession which is legal, valid and complete in all respects. In this regard, the complainant respectfully reserves his right to seek additional compensation for the delay and seeks liberty to modify or supplement the interest calculation sheet.

9. It is stated that the complainant had booked the apartment in the project in the year 2012 and since then he has eagerly awaited possession of the apartment. Therefore, despite the inordinate delay that has been caused by the respondent, the complainant seeks possession of the apartment, habitable and complete in all respects along with appropriate compensation for the period of delay caused by the respondent.

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

10. 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 possession.

**D. Reply by respondent**

- i. That the complaint is 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 7<sup>th</sup> of August 2012 as is evident from the submissions made in the following paras of the present reply.
- iii. The complainant had been allotted apartment bearing no. 184 having a tentative super area admeasuring 1745 sq.ft. located in the said project. On 6<sup>th</sup> of May 2015, letter had been issued by the respondent to the complainant pertaining to the mutual decision of the respondent and the complainant with respect to relocation of unit bearing no. 184 to the unit bearing no. 164

having tentative super area admeasuring 1745 sq.ft. It is respectfully submitted that the contractual relationship between the complainant and respondent is governed by the terms and conditions of the said agreement. The said agreement was voluntarily and consciously executed by the complainant. Hence, the complainant is 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 complainant has 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 36 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 36 months and grace period of 6 months as stipulated in the contract has to be calculated from 07.08.2012 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. are 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 indicated above and documents appended, it is comprehensively established that a period of 347 days was consumed on account of circumstances beyond the power and control of the respondent owing to passing of orders by statutory authorities. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period is required to be excluded, while computing the period availed by the respondent for the purpose of raising construction. It is pertinent to mention that it was categorically provided in clause 3(b)(iii) of the said agreement that in case of any delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession would be extended accordingly, the date of handing over of possession would be extended accordingly, solely on the developer's discretion till the payment of all of the outstanding amounts to the satisfaction of the developer. Since the complainant 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 complainant. In fact, the total outstanding amount including interest due to be paid by the complainant to the respondent on the date of dispatch of letter of offer of possession dated 01.12.2020 was Rs.13,97,199/-. Although, there was no lapse on the part of the respondent, yet the amount of Rs.3,91,287/- and Rs. 43,625 as GST input was credited to the account of the complainant.



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 dated 06.07.2021 depicting periods of delay in remittance of outstanding payments by the complainant as per schedule of payment incorporated in the buyer's agreement has been annexed as annexure R14. Thus, it is 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. It is submitted that the complainant 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 complainant of his contractual and financial obligations. The complainant 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 default 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 increases exponentially. The same also resulted in causing of substantial losses to the developer. The complainant 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 complainant 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 complainant, he had delayed payment of instalments and consequently, he was/is 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 3<sup>rd</sup> 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 27<sup>th</sup> 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 shall imply that such



intervening period from March 1, 2020, to September 30, 2020, will 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 R8 to annexure R12. It is further submitted that occupation certificate bearing no.20100 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. It needs to be emphasised that once an application for issuance of OC is submitted before the concerned competent authority the respondent ceases to have any control over the same. The grant of OC is the prerogative of the concerned statutory authority, and the respondent does not exercise any control over the matter. Therefore, the time period utilised by the concerned statutory authority for granting the OC needs to be necessarily excluded from the computation of the time period utilised in the

implementation of the project in terms of the buyer's agreement. As far as respondent is concerned, it has diligently and sincerely pursued the development and completion of the project in question.

- xiv. That the complainant was offered possession of the unit in question through letter of offer of possession dated 01.12.2020. The complainant was 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 him. However, the complainant intentionally refrained from completing his duties and obligations as enumerated in the buyer's agreement as well as the Act.
- xv. That the complainant wilfully refrained from obtaining possession of the unit in question. It appears that the complainant did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of buyer's agreement and consequently in order to needlessly linger on the matter, the complainant has preferred the instant complaint. Therefore, there is no equity in favour of the complainant. It needs to be highlighted that an amount of Rs. 14,87,258/- as on date is due and payable by the complainant. The complainant has intentionally refrained from remitting the aforesaid amount to the respondent. It is submitted that the complainant has consciously defaulted in his obligations as enumerated in the buyer's agreement. The complainant cannot be permitted to take advantage of his 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 complainant and without prejudice to the contentions of the respondent, it is submitted that the alleged interest frivolously and falsely sought by the complainant was to be constructed for the alleged delay in delivery of possession. It is pertinent to note that an offer of possession marks termination of the period of delay, if any. The complainant is not entitled to content that the alleged period of delay continued even after receipt of offer for possession. The complainant has consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for the consequences including holding charges, as enumerated in the buyer's agreement, for not obtaining possession.

- xvi. That buyer's agreement further provides that compensation 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 in the agreement. The complainant, having defaulted in payment of instalments, is not entitled to any compensation under the buyer's agreement. Furthermore, in case of delay caused due to non-receipt of occupation certificate or any other permission/sanction from the competent authorities, no compensation shall be payable being part of circumstances 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 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.

11. 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:**

12. 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**

13. 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 it 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 on the relief sought by the complainant**

**G.I Delayed possession charges**

16. In the present complaint, the complainant intend 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*

17. 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 of thirty six 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.*

18. 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.

19. 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.
20. 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.
21. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of 36 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 to the promoter for the exigencies beyond the control of the promoter. Therefore, the due date of possession comes out to be 07.02.2016.

22. **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.

23. 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.
24. 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%.



25. 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;"*

26. 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.
27. 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 07.08.2012, The developer proposed to hand over the possession of the apartment within a period of thirty-six (36) 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 buyer's 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 06.12.2015.

28. 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 of the present 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.
29. 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 07.02.2016. 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 complainant as per the terms and conditions of the buyer's agreement dated 07.08.2012 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 07.08.2012 to hand over the possession within the stipulated period.
30. 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 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 + six months of grace period is allowed i.e. 07.02.2016 till the expiry of 2 months from the date of offer of possession (01.12.2020) which comes out to be 01.02.2021.
31. 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. 07.02.2016 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.

32. Also, the amount of Rs. 3,91,287/- (as per offer of possession dated 01.12.2020) so paid by the respondent to the complainant 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:**

33. 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 + six months of grace period is allowed i.e. 07.02.2016 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 complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. Also, the amount of Rs.3,91,287/- 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.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020
34. Complaint stands disposed of.
35. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2022