

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

Complaint no. : 4027 of 2021
First date of hearing: 05.01.2022
Date of decision : 17.05.2022

Harpreet Singh Marwah
R/o: - 65, 1st Floor, Kallu Sarai,
Hauz Khas, New Delhi-110016

Complainant

Versus

Perfect Buildwell Pvt. Ltd.
Regd. Office at: - D-64, Defence Colony,
New Delhi-110024

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Vijay Pratap Singh
Ms. Ankur Berry

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 26.10.2021 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Zara Aavaas" at sector 104, Gurugram
2.	Nature of the project	Affordable group housing colony
3.	Project area	5 acres
4.	DTCP license no.	12 of 2014 issued on 10.06.2014 valid up to 09.12.2019
5.	Name of licensee	M/s Perfect Buildwell Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 152 of 2017 dated 28.08.2017 up to 31.12.2019
7.	Unit no.	1023, 02 nd floor, Block 1 [page no. 32 of complaint]
8.	Unit measuring	569 sq. ft. (page no. 32 of complaint)
9.	Date of execution of Flat buyer's agreement	01.12.2015 [page no. 30 of complaint]
10.	Date of environment clearance	09.03.2015 [annexure P1 on page no. 20 of complaint]

11.	Date of sanctioning of Building Plan	08.12.2014 [as per project details]
12.	Possession Clause	<p>3. Possession</p> <p>"Unless a longer period is permitted by DGTCP or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Apartment Buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the Developer from time to time and not being in default under any part of this Agreement, including but not limited to timely payment of installment of the Total Cost and other charges as per the payment Plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the said apartment to the apartment buyer(s) within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of nay Judicial/concerned State Legislative Body."</p>

13.	Total consideration	Rs. 23,20,500/-[basic sale price] [as per the agreement on page no 34 of complaint]
14.	Total amount paid by the complainant	Rs. 23,93,258/- [as alleged by complainant]
15.	Due date of delivery of possession as per clause 3	09.03.2019 [calculated from the date of environment clearance i.e., 09.03.2015]
16.	Occupation certificate	04.12.2019 Annexure R-3 on page no. 20 of reply]
17.	Offer of possession	01.02.2020 [annexure R-4 on page no. 23 of reply]

B. Facts of the complaint

- That the respondent made advertisement in the newspaper 'Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name "affordable group housing colony "commonly known as" ZARA AAVAAS" floated under Haryana Government's affordable housing policy, located at 104, Dwarka express way, Gurgaon, Haryana.
- That the draw of the said project was held, wherein the complainant was issued the allotment letter in tower 1, flat no 1023 at 2nd floor.
- That the apartment buyer's agreement was executed between the complainant and the authorised representative of the respondent on 01.12.2015. That the total consideration of

the flat was Rs 23,20,500/- and other charges payable was Rs 72,758/- amounting to Rs 23,93,258/- the complainant paid the amount towards the cost of flat as and when the demand were raised by the respondent. That as per the ABA clause no 3.1 the respondent was supposed to hand over the actual physical possession of the flat to the complainant latest by 09.04.2019.

6. That the complainant has paid the total consideration of Rs 23,93,258/- against the flat in time bound manner.
7. That the slow pace of construction status and absence of basic amenities respondents took more time to give actual physical possession after getting occupancy certificate.
8. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of its terms of the agreement. That the respondent though has given the NOC in year 2019 but surprisingly has raised an additional demand of 3% vat on dated 16.10.2020 without giving its breakup and justification.
9. That the complainant has made the VAT payment to the respondent as and when the demand was raised by the respondent. Now when the VAT department has penalised the respondent for his noncompliance of statutory provisions whereby the VAT department demanded the additional VAT

of 3% along with penalty. The respondent is collecting same from the complainants on pro rata area basis from the allottees.

10. That respondent is charging interest on delayed instalment @ 15 % p.a. compounded quarterly interest as per clause 2.5 of apartment buyer agreement and offer the delay penalty for himself is just Rs NIL per Sq. ft per month as per clause 3.1 is totally illegal arbitrary and unilateral.

C. Relief sought by the complainant:

11. The complainant has sought the following relief:
 - (i) Direct the respondent to pay delay possession charges of Rs. 23,93,258/- from due date of possession along with pendente lite and future interest till actual date of possession.
 - (ii) Direct the respondent to waive off the interest/penalty charged by respondent on 16.10.2020, which has been imposed by the VAT/GST department on respondent.
12. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

13. That the respondent is a company, registered under the Companies Act, 1956 having its registered office at D-64, defence colony, New Delhi-110024. That for the past 15 years

the respondent company has been engaged in the business of real estate sector and is one of the most prestigious builders in the country.

14. That the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the subject matter of the claim does not fall within the jurisdiction of this authority.
15. That the respondent had applied for the occupation certificate vide application dated 09.04.2019 and duly received the occupation certificate from the DTP, Gurugram on 04.12.2019. That after the receiving of the occupation certificate the respondent offered the possession in phased manner and as per the affordable group housing policy, 2013.
16. That as the complainant has come before this Hon'ble Authority with unclean hands since the complainant has failed to mention that the occupation certificate being received on 04.12.2019 and offer of possession being sent on 01.02.2020, the complainant was duty bound to take the possession of the residential unit within 2 months of OC however, the complainant delayed the physical taking over without any reason.
17. The respondent constantly followed up with the complainant however, the complainant intentionally delayed taking physical possession and only on 20.06.2020 did the letter of physical possession could be issued to the complainant.

18. That as per the apartment buyer's agreement the complainant had to make payments for electricity connection charges, power backup charges, piped gas charges, etc. Thus, demands raised under the heads of IFSD, administration charges, meter connections charges, advance electricity consumption deposit are within the terms of the apartment buyer's agreement and nothing illegal.
19. That no cause of action arose against the respondent company, which could have resulted in filing of the present complaint. That the complaint is frivolous, ill motivated and with malicious intent and is not maintainable. It is further submitted that the complainant has very strategically and deceitfully filed the present complaint. Thus, on this ground alone the complaint is liable to be dismissed.
20. That the respondent has obtained occupation certificate only after taking necessary certificates and no objection from the concerned departments. That further it is submitted that occupation certificate is granted only after complete compliance of necessary approvals from fire safety department, State Environment Impact Assessment Authority and Structure Stability Certificate from Superintending Engineer (HQ) HUDA.
21. That the complainant has got 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 said affordable group housing policy, 2013.

22. That the respondent has already offered the possession of the flat in question to the complainant and the possession was also taken by the complainant who have already been residing peacefully.
23. That the respondent company was facing umpteen roadblocks in construction and development work in projects comprised in project beyond the control of the Respondent such as the follows:
- Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 mtr. and 60 mtr. wide and the consequent litigation for the same, the issue is even yet not settled completely.
 - Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water.
 - Total and partial ban on construction due to the directives issued by the National Green Tribunal during various times since 2015.
 - The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi NCR region especially during the

winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019. Additionally, it imposed a set of partial restrictions, some of which are:

- i. No construction activities between 6 pm till 6 am.
 - ii. Stop the usage of Diesel Generator Sets.
 - iii. Stop entry of Truck Traffic into Delhi.
 - iv. Close brick kilns, Hot Mix plants and Stone Crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
24. That demobilization of the labour working on the projects, and it took several additional weeks to resume the construction activities with the required momentum. Thus, the altered timelines were never intended, and the respondent lacked any control in the subsequent deference of the project. The respondent is ready and willing to bring on record all necessary documents and orders, substantiating the delay in timelines of the project, as ordered by this Hon'ble Authority.
25. That the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the

respondent are nothing but an afterthought, hence the present complaint filed by the complainant deserves to be dismissed with heavy costs.

E. Jurisdiction of the authority

26. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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

27. 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

28. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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; The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

29. 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 objections raised by the respondent.

F.I Objection regarding delay due to force majeure.

30. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as non acquisition of land by Haryana Urban Development Authority, labour issue, disruptions/delays in supply of stone, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and

Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time but all the pleas advanced in this regard are devoid of merit. The as per the possession clause 3.1 of the builder buyer agreement the possession of the said unit was to be delivered within 4 years from the date of approval of building plan or environment clearance, whichever is later. The due date of possession is calculated from date of environment clearance as it is later than the date of approval of building plan i.e., 09.03.2015, which comes out to be 09.03.2019. The authority is of the view that the events taking place do not have any impact on the project being developed by the respondent/promoter. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

- G.I Direct the respondent to pay delay possession charges of Rs. 23,93,258/- from the due date of possession along with pendente lite and future interest till actual date of possession.**

31. 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

18(1). 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."

32. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 3.1- "Unless a longer period is permitted by DGTCP or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Apartment Buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the Developer from time to time and not being in default under any part of this Agreement, including but not limited to timely payment of installment of the Total Cost and other charges as per the payment Plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the said apartment to the apartment buyer(s) within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of nay Judicial/concerned State Legislative Body."

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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.

34. 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.
35. 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., 17.05.2022 is 7.40%. Accordingly, the

prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.40% per annum.

36. 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;"*

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

G. II. Direct the respondent to waive off the interest/penalty charged by the respondent on 16.10.2020, which has been imposed by the VAT/GST department on respondent.

38. That no specific details have been given in this regard. Even this relief is not pressed by the complainant during the course of arguments. Hence, the authority has not returned any finding w.r.t. to the above-mentioned relief.
39. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions 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 apartment buyer's agreement executed between the parties on 01.12.2015, the possession of the booked unit was to be delivered within 4 years from the date of approval of building plan (08.12.2014) or grant of environment clearance (09.03.2015), whichever is later. The due date of handing over of possession is calculated from grant of environment clearances i.e., 09.03.2015, being later. As such, the due date of handing over of possession comes out to be 09.03.2019.
40. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.40% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 09.03.2019 till offer of possession of the booked unit i.e., 01.02.2020 plus

two months which comes out to be 01.04.2020 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

H. Directions of the authority

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

- i. The respondent is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e., 09.03.2019 offer of possession of the booked unit i.e., 01.02.2020 plus two months which comes out to be 01.04.2020 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
- iii. The complainant is also directed to pay the outstanding dues, if any.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e.,


the delayed possession charges as per section 2 (za) of the Act.

- v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

42. Complaint stands disposed of.

43. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2022