BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4766 of 2022**
First date of hearing:		**06.09.2022**
Date of decision	**:**	**06.09.2022**

Sanjay Kumar Singh
R/O : House No. 2793, Gali no. 1, Phase-2,
Laxman Vihar, Gurugram-122001

Complainant

Versus

M/s Perfect Buildwell Private Limited Office:
1st Floor, D-64, Defence Colony, New Delhi-110024

Respondent

CORAM:

Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:

Sh. Vijay Partap Singh (Advocate)	**Counsel for the complainant**
Ms. Ankur Berry (Advocate)	**Counsel for the respondent**

ORDER

1. The present complaint dated 14.07.2022 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.N.	Particulars	Details
1.	Name of the project	Zara Aavaas, Sector 104, Dwarka Expressway, Gurugram.
2.	Allotment letter	24.10.2015 (annexure P1, page 18 of complaint)
2.	Apartment no.	07, floor 02, tower 03 admeasuring 569 sq. ft. (, page 21 of complaint)
5.	Date of builder buyer agreement	05.11.2015 (page 20 of complaint)
6.	Date of building plan approval	08.12.2014 (page 22 of complaint)
7.	Date of environmental clearance	09.03.2015 (page 22 of complaint)
8.	Possession clause	***3. Possession*** *3(1) Unless a longer period is permitted by the 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 installments 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(four) years from the date of approval of building plans or grant of environment clearance, whichever is later.***

		(Emphasis supplied)
9.	Due date of possession	09.03.2019
10.	Basic sale price	Rs. 23,20,500/- as per clause 2.1 of BBA (page 25 of complaint)
	Total sale consideration	RS. 24,13,321/- as per SOA dated 16.12.2019 (page 46 of complaint)
11.	Paid up amount	Rs. 23,81,570/- as per SOA dated 16.12.2019 (page 46 of complaint)
12.	Occupation certificate	04.12.2019 (annexure R4, page 32 of reply)
13.	Offer of possession	05.02.2020 (annexure P4, page 49 of complaint)
14.	Possession certificate dated	01.03.2020 (annexure P5, page 51 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

I. 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 complainant approached to the respondent for booking of an apartment having carpet area of 569 sq. ft. and balcony area of 89 sq. ft. The draw of the said project was held, wherein the complainant was allotted flat no. 07 at 2nd floor of tower 03 in the said project.

II. The respondent to dupe the complainant in the nefarious not even executed a one-sided buyers' agreement signed between the parties on 05.11.2015, just to create a false belief that the project would be

completed in time bound manner, and in the garb of this agreement persistently raised demands due to which it was able to extract huge amount of money from him. An apartment buyers' agreement was executed between the parties. The total consideration of the flat was Rs. 24,13,321/- and the complainant paid Rs. 24,13,321/- towards the cost of flat as and when the demands were raised by it. As per the buyers' agreement clause no. 3.1 the respondent was supposed to hand over the actual physical possession of the flat to the complainant latest by 09.03.2019.

III. That there is delay in handing over the possession of the allotted unit even after offer of possession of same on 05.02.2020. The said offer of possession dated 05.02.2020 was accompanied with statement of account dated 16.12.2019 which contained various illegal charges/extra charges on pretext of VAT, service tax, GST at wrong rate, etc. Finally, the possession of the allotted unit was handed over on 01.03.2020 to the complainant.

IV. That respondent has charged interest on in delayed instalment @ 15 % P.A. compounded quarterly interest as per clause 2.4 of ABA offered the delay penalty as just Rs NIL per Sq. ft per month as per clause no 3.1, which is totally illegal arbitrary and unilateral.

V. That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, and trick of extract more and more money from complainant pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct, consequently injuring the interest of the buyers including the complainant who have spent his entire hard-earned savings in order to buy a home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which

the respondent conducted its business and the lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss. The complainant has been making the payment of VAT regularly as per the demand raised by the respondent @1%. Surprisingly the respondent has raised additional demand of 3% VAT along with interest from delay in depositing the VAT by it to the VAT department. The complainant categorically states that he can't be made liable for the mistakes and wrongs of the respondent, he agrees to make the 3% VAT which may be adjusted against the amount to be recovered from the respondent in terms of delay in handing over the flat under violation of Act, 2016. Due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant in time has accrued huge losses on account of the career plans of the family member and themselves. The future of the complainant and the family has been rendered dark as the planning with which he invested her hard-earned monies has resulted in subzero results and borne thorns instead of bearing fare ruts.

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

4. The complainant has sought following relief(s).

I. **Direct the respondent to pay interest @ 8.65% p.a. as per the prevailing MCLR plus 2 percent, for delay period starting from 09.03.2019 till 01.03.2020.**

II. **Direct the respondent to revoke/cancel/ waive off/ withdraw all such illegal amounts which the respondent is demanding from the complainant in the form of taxes, administration charges, advance electricity consumption deposit, holding charges and water security etc.**

III. **Direct the respondent to execute and register conveyance deed of the said unit.**

IV. Direct the respondent to pay the cost of litigation and the cost towards the mental agony faced by the complainant.

5. 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

6. The respondent has contested the complaint on the following grounds.

a. That at the very outset it is submitted that the complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this authority as the subject matter of the claim does not fall within the jurisdiction of this authority.

b. That the present complaint has been filed against the affordable group housing project namely, Zara Aavaas which comprises of 19 towers/residential blocks on 5 acres. The project has been developed in phased manner and the current complainant comprises of allottee of phase 1 of the project. phase 1 of the project was completed under the license no. 12 of 2014 dated 09.06.2019 renewed vide memo no. LC-3048/Asstt(AK)/2019/25235 dated 10.10.2019. That the building plans were approved vide memo no. ZP-1005/SD(BS)/2014/27657 dated 08.12.2014. Further the environmental clearance for construction of the affordable group housing colony was received vide memo no. SEIAA/HR/2016/280 dated 09.03.2015.

c. That the construction of the project thereafter was conducted by the respondent by abiding all terms of the approvals so received. Further upon the enactment of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017 the respondent duly applied for the

registration and the same was received by it vide memo No. HRERA(Reg.)483/2017/751 dated 28.08.2017. The registration no. of the phase I of the project is regd. no. 152 of 2017.

d. That the respondent had applied for the occupation certificate vide application dated 09.04.2019 and duly received the same from the DTP, Gurugram on 04.12.2019. After the receiving of the occupation certificate the respondent offered the possession in phased manner and as per the affordable group housing policy, 2013.

e. That after receiving the OC dated 04.12.2019, the respondent vide letter for offer of possession dated 05.02.2022, directed the complainant to take possession of the unit and to further clear all dues. However, the complainant chose to delay the matter on one pretext and another. The complainant was duty bound to take the possession of the residential unit within 2 months of OC. However, he delayed the physical taking over without any reason.

f. It is submitted that complainant has to adhere to the terms and conditions of the agreement for the transaction regarding his unit. 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. vide clause 2.4.

g. The respondent has obtained OC only after taking necessary certificates and no objection from the concerned departments. Further, it is submitted that occupation certificate was 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.

h. That the primary relief sought by complainant being "delay interest" in handing over the possession is untenable in view of the fact that there was no delay in granting the possession of the flat. It is humbly submitted that there was change in the timelines of the project and the said changes and alteration were not on account of any attribute due to the negligence or conduct of the respondent. It is further pertinent to mention that the timeline alteration were on account of reason beyond the control of the respondent and the complainant has been aware of the alteration in the time line to offer possession and completion of the project. Also, the respondent has offered possession to the complainant way back on 05.02.2020.

i. That with regard to the untenable prayer qua the VAT charges this authority may consider the fact that the respondent/builder has not opted for the composition scheme notified by the excise and taxation department, Government of Haryana. That nothing has been charged from the allottees which is outside the purview of the application form, payment schedule plan and builder buyer agreement. The demand made for HVAT is just, fair and as per applicable law.

j. It is pertinent to submit that the issue of HVAT as raised by complainant is baseless and deserves to be dismissed outrightly. It is humbly submitted that promoter/respondent has demanded HVAT as per the law and in proportionate manner from all the allottees. Further nothing has been charged by respondent which does not form part of the application form, payment schedule plan and builder buyer agreement. It is submitted that respondent/promoter has not opted for the composition scheme as floated by the Government of Haryana.

k. That it is humbly submitted before this authority that the respondent has already offered the possession of the flats in the project to the allottees way back in 2020 and the possession has also been taken by the complainant who has already been residing peacefully.

l. It is further submitted that HVAT is an indirect tax and the Respondent-Promoter being the tax collecting agency is doing a limited job of collecting HVAT from allottees/end customers/users on proportionate basis/equally among all the allotees and depositing it with the competent department i.e., Excise & Taxation Department. The project in question is being developed under affordable group housing scheme but in that case also, the Excise & Taxation Department has levied HVAT. It is further submitted that the promoter-respondent is not a composition dealer and the list of the composition companies who have opted for the composition scheme can be cross-checked. Further this authority in bunch matter case titled as RERA-1027-2021 titled as Amrender Kumar Vs M/s BPTP dated 10.05.2022 and others have taken a view that the promoters who have not opted for composition scheme can collect HVAT from its allottees/customers.

m. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead this authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.IISubject-matter jurisdiction

10. 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) The promoter shall-*
>
> *(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.

11. 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.

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

13. 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.1 Direct the respondent to revoke/cancel/waive off/withdraw all such illegal amounts which the respondent is demanding from the complainant in the form of taxes, administration charges, advance electricity consumption deposit, holding charges and water security IFSD etc.

14. The complainant alleged that the respondent has raised the demand for illegal charges in name of taxes, administrative charges, advance electricity consumption charges, holding charges. As per statement of account dated 16.12.2019, attached with offer of possession, it is evident that the respondent has charged such as administration charges, taxes, etc. (annexure P3, page 46 of complaint), the authority observes as under:

i. **Interest Free Security Deposit:** In response to the specific query, the authority is of the view that the interest free security deposit is to be kept in a separate account which would be handed over to the association of allottees after the free maintenance period of the promoter expires. Accordingly, the promoter is directed to give details of the separate account to every allottee, and annual statement of deposit be also sent to them within 3 months of expiry of financial year.

ii. **Administrative charges:** In response to the specific query, the authority is of the view that the administrative charges are as per earlier decision of administration on HUDA pattern, and these are to meet the misc. expenses for getting the conveyance done in favour of the allotee. Although, the DTP in response to CM Window complaint has disallowed the charges as there was no specific mention that these are for conveyance deed. Now as per clarification given by counsel for the complainant, the administrative charges are being raised for meeting misc. expenses for getting the conveyance deed in favour of allottee and these are as per the practice allowed by the administration, and these are allowed.

iii. **Meter Connection:** The meter connection charges are to be borne by the allottee accordingly and found to be in order.

iv. **Advance electric consumption deposit:** This a security deposit and that too a meagre amount of Rs. 3,000/-, the authority finds no discrepancy in this demand.

v. **VAT:** The counsel for the promoter states at bar that the respondent promoter has not opted for composition scheme for the period 2014 to 2017 of scheme notified by Excise and Taxation department, Government of Haryana dated 24.09.2015. Accordingly, VAT is being

charged. Further, the counsel for the complainant states that the penalty imposed by the department for default on part of promoter is being passed on to the complainant. However, the matter is in appeal before concerned taxation authorities and hence the decision of the concerned authority shall apply accordingly.

vi. **GST:** The authority has decided this issue in the complaint bearing no. ***4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.*** wherein it has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.

In the present complaint, the possession of the subject unit was required to be delivered by 09.03.2019 and the incidence of GST came into operation thereafter on 01.07.2017. However, the demand be raised as per decision of National Anti-profiteering Authority (GST), New Delhi.

vii. **Holding charges:** Holding charges would not be charged by the promoter at any point of time as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020. The complainant is hereby directed to make the payment as per the above determination to the promoter.

G.II Conveyance deed

15. With respect to the conveyance deed, the provision has been made under clause 8 of the buyer's agreement and the same is reproduced for ready reference:

8. Execution and Registration of Conveyance deed

The Developer, upon completion of construction of the Said Apartment and/or after obtaining occupation certificate, shall transfer the Said Apartment by executing and registering a conveyance deed in respect thereof in favour of the Apartment Buyer(s), provided that the Apartment Buyer(s) fulfils the entire obligations as stated in this Agreement. The Apartment Buyer(s) agrees that no ownership, interest, title or control in the Said Apartment accrues to the Apartment Buyer(s) prior to the registration of the Conveyance Deed for the said Apartment.

16. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

> ***"17. Transfer of title.-***
>
> *(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*
>
> *Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

17. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant, whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

18. The possession of the subject unit has already been offered after obtaining occupation certificate on 04.12.2019 and the same was taken by the complainant. So, the respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

G.II Delay possession charges

19. 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*

20. The clause 3(1) of the apartment buyer agreement (in short, agreement) provides the time period of handing over of possession and is reproduced below:

> ***3. Possession***
> ***3.1*** *Unless a longer period is permitted by the 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 for time to time and not being in default under any part of this Agreement, including but not limited to timely payment of instalments 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(four) years from the date of approval of building plans or grant of environment clearance, whichever is later.*

21. The authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plans or grant of environment clearance, whichever is later. As per clause 3.1 of buyer's agreement the possession of the allotted unit was to be handed over within four years from the date of approval of building plans or gran of environment clearance, whichever is later. The date of environment clearance i.e., 09.03.2015 being later, and the due date of handing over of possession is reckoned from the date of environment

clearance. Therefore, the due date of handing over of possession comes out to be 09.03.2019. The delay possession charges shall be payable from the due date i.e., 09.03.2019 till the expiry of 2 months from the date of offer of possession (05.02.2020) which comes out to be 05.04.2020 or actual taking over of possession whichever is earlier i.e. upto 01.03.2020.

22. Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 10% p.a. for every month of delay on the amount paid by him to the respondent from the due date of possession i.e., 09.03.2019 till the expiry of 2 months from the date of offer of possession (05.02.2020) which comes out to be 05.04.2020 or actual taking over of possession whichever is earlier 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.

H. Directions of the authority

19. 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 the interest at the prescribed rate i.e., 10% per annum from every month of delay on the amount paid by the complainant from due date of possession i.e., 09.03.2019 till the expiry of 2 months from the date of offer of possession (05.04.2020) or actual taking over of possession whichever is earlier i.e. upto 01.03.2020.

ii. The arrears of interest accrued so far shall pe 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., 10% 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 execute the conveyance deed of the allotted unit within the 3 months from the date of this order.

vi. The respondent shall not charge anything from the complainant(s) which is not the part of the agreement of sale.

vii. 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.

15. Complaint stands disposed of.

16. File be consigned to registry.

(Sanjeev Kumar Arora) Member | **(Ashok Sangwan)** Member | **(Vijay Kumar Goyal)** Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.09.2022