

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

Complaint no. : 1623 of 2022
First date of hearing: 17.05.2022
Date of decision : 31.03.2023

Himanshu Jain
R/o 18104, Zara Aavas,
Sector 104, Gurgaon (Haryana)-122006.

Complainant

Versus

M/s Perfect Buildwell Pvt. Ltd.
Regd. Office at: 1st Floor, D-64,
Defence Colony, New Delhi-110024.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Vijay Pratap Singh (Advocate)
Ms. Ankur Berry (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 07.04.2022 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 provisions of the

Act or the Rules and regulations made there under or to the allottees 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.	Nature of the project	Affordable group housing colony
3.	DTCP license no.	12 of 2014 dated 10.06.2014
4.	RERA Registered/ not registered	Not registered
5.	Allotment letter	15.03.2016 (page 24 of complaint)
6.	Apartment no.	04, floor 10, tower 18 admeasuring 524 sq.ft. (page 24 of complaint)
7.	Date of builder buyer agreement	06.05.2015 (page 25 of complaint)
8.	Date of building plan approval	08.12.2014 (as per BBA on page 28 of complaint)
9.	Date of environmental clearance	09.03.2015 (as per BBA on page 28 of complaint)
10.	Possession clause	3. Possession <i>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</i>

		<i>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)</i>
11.	Due date of possession	09.03.2019
12.	Total sale consideration	Rs.21,43,000/- as per clause 2.1 of BBA (page 31 of complaint)
13.	Paid up amount	Rs.22,28,721/- as SOA dated 16.12.2019 on page 54 of complaint)
14.	Occupation certificate	04.12.2019 (page 32 of reply)
15.	Offer of possession	30.10.2020 (page 57 of complaint)
16.	Possession certificate dated	30.12.2020.(page 59 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That on the representation and advertisement by the respondent, the complainant booked a unit in the project named "ZARA AAVAAS" at Sector 104, Dwarka Express Way, Gurgaon, Haryana for a total sale consideration of Rs.21,43,000/- and paid a total sum of Rs. 22,28,721/- against it in time bound manner.
 - II. That a buyer's agreement dated 06.05.2015 was executed between the parties and unit bearing no. 04, floor 10, tower 18 admeasuring 524 sq.ft. was allotted to him.
 - III. That as per clause 3.1 of the buyer's agreement, the possession of the unit was to be handed over by 09.03.2019, but it was offered on

30.10.2020 and thereafter handed over to the complainant on 30.12.2020.

- IV. That vide clause 2.4 of the buyer's agreement, respondent has illegally, arbitrarily and unilateral charged an interest @15 % p.a. compounded quarterly on the delayed installments but penalty for the delay in offering possession of the said unit is just Rs. NIL per sq. ft per month as per clause 3.1.
- V. That the respondent has not even paid any delay possession charges to the complainant till date. Therefore, he is seeking delay possession charges along with interest at prescribed rate from due date till actual delivery of the unit.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).
- I. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.
 - 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 etc.
 - III. To direct the respondent to refund the Interest Free Service Deposit (IFSD).
 - IV. To direct the respondent to execute and register conveyance deed in favour of complainant.
 - V. 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 vide reply dated 11.10.2022 contested the complaint on the following grounds: -

- i. That the construction of the project was made by the respondent by abiding all terms of the approvals received. It applied for the Occupation Certificate vide application dated 09.04.2019 and was duly received from the DTP, Gurugram on 04.12.2019.
- ii. That after receiving the OC dated 04.12.2019, the respondent vide offer of possession letter dated 30.10.2020 directed the complainant to take possession of the unit and to further clear all dues.
- iii. That as per clause 2.4 of the buyer's agreement, the complainant had to make payments for electricity connection charges, power backup charges and piped gas charges, etc. Thus, any payments or demands raised under the heads of IFSD, Administration Charges, Meter Connections Charges, Advance Electricity Consumption Deposit are within the terms of the buyer's agreement and nothing illegal has ever been demanded from the complainant.
- iv. That the timeline alterations were on account of reason beyond the control of the respondent and the complainant has been aware of the same.
- v. That the respondent has not opted for the composition scheme notified by the Excise and Taxation department, Government of Haryana. Nothing has been charged from the allottee which is outside

the purview of the application form, payment schedule plan and buyer's agreement. The demand made for HVAT is just, fair and as per applicable law.

- vi. All other averments made in the complaint were denied in toto.
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 those undisputed documents and submissions made by the complainant.

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.II Subject-matter jurisdiction

10. 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) 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 relief sought by the complainants.

F.I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.

12. 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.”

13. Clause 3.1 of the buyer’s agreement provides for 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 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)

14. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

15. 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.
16. 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., 31.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

17. 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.
19. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 06.05.2015, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. Therefore, the due date of handing over possession was 09.03.2019. The respondent has failed to handover possession of the subject apartment within prescribed time. Accordingly, it is the failure of the

respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 06.05.2015 executed between the parties.

20. Accordingly, the 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.03.2019 till offer of possession plus two months i.e., 30.12.2020 at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II Direct the respondent to refund the Interest Free Service Deposit (IFSD).

i. Interest Free Security Deposit

21. 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 the annual statement of deposit be also sent to him within 3 months of expiry of financial year.

F.III 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.

22. 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. the authority observes as under:

i. Administrative charges:

23. The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developer (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developer in the name of registration charges, is significant. The authority considering the plea of the developer-promoter directs that a nominal amount of upto Rs.15000/- can be charged by it for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental/miscellaneous and of like nature, so the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged.

ii. Advance electric consumption deposit:

This is a meagre security deposit of Rs.3,000/- and the authority finds no discrepancy in this demand.

iii. Electric, water and sewerage connection charges:

24. The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted

to him vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

iv. Holding charges:

25. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) 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. 3864-3899/2020 decided on 14.12.2020.

v. VAT:

- VI.** 26. The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only and if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority.

v. GST:

27. 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(s)/allottee(s) as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreements. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the

statutory benefits of that input tax credit to the allottee(s) within a reasonable period.

F.IV Direct the respondent to execute and register conveyance deed of the flat in favour of complainant.

28. 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.

The possession of the subject unit has already been offered after obtaining occupation certificate on 30.10.2020 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.

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

29. The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. For claiming compensation under sections 12,14,18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority

30. 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 to the complainant against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 09.03.2019 till offer of possession plus two months i.e., 30.12.2020 at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% 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 delayed possession charges as per section 2(za) of the Act.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under Affordable Housing Policy.
31. Complaint stands disposed of.
32. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.03.2023