

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

Complaint no. : 1044 of 2021
First date of hearing: 06.05.2021
Date of decision : 17.05.2022

Kapil Mandil
R/o: - A-706, Sanskriti Apartment, Sector-43,
Near Sujjan Vihar, Gurugram-122002

Complainant

Versus

M/S Perfect Buildwell Private Limited
Address: - H&O House, D-64, Defence Colony,
New Delhi-110024

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Saurabh Sachdeva
Shri Ankur Berry

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 05.03.2021 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 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, Sec-104, Gurugram
2.	Nature of the project	Affordable group housing
3.	Apartment no.	01, 2nd floor, tower T18 (page no. 27 of complaint)
4.	Unit area admeasuring	598 sq. ft. (page no. 27 of complaint)
5.	Date of builder buyer agreement	17.09.2021 *Note: vide order dated 08.09.2021, the authority directed both the parties to execute the buyer's agreement and the same was executed on 17.09.2021 between the parties.
6.	Date of booking	15.06.2015 [annexure 2 on page no. 27 of complaint]
7.	Date of allotment letter	17.10.2015 [page no. 27 of complaint]
8.	Date of environment clearance	09.03.2015 (as per project details)
9.	Date of approval of building plans	26.11.2014 (as per project details)
10.	Possession clause as per affordable housing policy	Clause 1 (iv) of the policy "All such projects shall be required to be necessarily completed within a period of 4 years from the date of approval of building plans or grant of environmental clearance whichever is later. "

		(emphasis supplied)
11.	Due date of possession	09.03.2019 [calculated from the date of environment clearance]
12.	Total sale consideration	Rs 21,23,681/- [as per the statement of account on page no. 41 of complaint]
13.	Amount paid by the complainant	Rs. 20,59,878/- [as per statement of account on page no. 41 of complaint]
14.	Occupation certificate	04.12.2019 [annexure R4 on page no. 18 of reply]
15.	Offer of possession	07.12.2019 [annexure R3 on page no. 17 of reply]

B. Facts of the complaint

3. That the complainant, Mr Kapil Mandil is a peace loving and law-abiding citizen of India, who nurtured hitherto an un-realized dream of having his own house in upcoming societies with all facilities and standards, situated around serene and peaceful environment.
4. That the complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondent. The respondent enticed various customers including the complainant to pay their hard-earned money in the purchase of a unit in the project known as 'Zara Aavaas' at Sector 104, Gurugram, Haryana. The complainant has paid, a sum of Rs.20,59,878/- till November, 2018 which is more than 100% of the total consideration i.e. Rs.20,42,200/- on the promises and commitments that the offer of possession of the unit will be delivered in time to the complainant. But unfortunately, even after a delay of more than one year and eleven months, the date of possession being 09.03.2019, the respondent has failed to offer legal and rightful possession of the unit to the complainant till date. In fact, despite receiving more

than 100% payable amount the respondent is demanding illegal charges in the name of taxes, administrative charges, advance electricity consumption charges, holding charges, etc. from the complainant which is a clear-cut violation of the Act, 2016 and Affordable Housing Policy, 2013. The complainant also send numerous letters, emails to the respondent in regard to not charge illegal charges and gave him rightful and legal possession of the flat but the respondent did not pay any heed towards the genuine request of the complainant and ignoring the letters, emails sent by the complainant from one pretext to another.

C. Relief sought by the complainant:

5. The complainant has sought the following relief:
 - i. Direct the Respondent to pay interest for every month of delay, since 9th March, 2019 in offering possession of the Flat to the complainant, on the amount taken from the complainant for the aforesaid flat, at the rate prescribed by the Act, 2016 till the respondent hands over the legal & rightful possession of the flat.
 - 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 flat in favor of complainant.
 - iv. Cost of litigation
6. 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.

E. Reply by the respondent:

7. That the respondent has 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 of the flat in question on 07.12.2019 as per the Affordable Group Housing Policy, 2013. That it is the complainant who has not come forward to take the physical possession of the flat in question even after repeated reminders.

8. That since the possession was offered on 07.12.2019 the complainant was duty bound to make payments on account of last payment, however till date neither has the complainant made the due payment nor taken the possession. That admittedly the Respondents sent various reminders to the complainant to take the possession however to no avail.
9. That the complainant failed to sign and execute the apartment buyer's agreement even after repeated calls and communication and the respondent company was forced to send letter dated 13.06.2016 to the complainant requesting the complainant to visit the office of the respondent for signing the apartment buyer's agreement. that complainant again failed to come and sign the apartment buyer's agreement and thus another letter dated 20.02.2017 was issued by the respondent company. It is submitted that even though the complainant failed to execute the said agreement yet the same inscribes the terms of agreement for the transaction regarding the unit of the complainant. 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. Thus, any payments or demands raised under the heads of IFSD (Interest Free Security Deposit), administration charges, meter connections charges,

advance electricity consumption deposit are within the terms of the apartment buyer's agreement and nothing illegal has ever been demanded from the complainant.

10. That the primary relief sought by the 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 07.12.2019 and till date the complainant has failed to take the possession thereof.

11. That it is humbly submitted before this hon'ble authority that the complainant is a regular defaulter and yet the respondent had with bonafide intention and as a gesture of goodwill, waived off the entire interest on the delayed payments. That the respondent has already offered the possession of the flat in question to the complainant, but it is the complainant who has not come forward to take the physical possession and clear outstanding dues/ final demand letter. That the complainant has been repeatedly reminded of the offer of possession and the respondent has sent many reminders letters asking the complainant to come forward and take the physical possession of the flat in question after clearing all the dues towards the flat in question. That it is the complainant who

has not come forward to take the physical vacant possession the flat.

12. That it is also submitted that the possession was offered on 07.12.2019 along with the final demand letter and the complainant has not paid the outstanding amount till date which amounts to Rs. 1,67,912/-.
13. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant are 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 Hon'ble authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
14. 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

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

E. I Territorial jurisdiction

16. 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

17. 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.

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 complainants at a later stage.

18. On 10.03.2022 and 25.03.2022 respectively the respondent/builder moved two applications i.e., one for waiver of penalty to the tune of Rs. 1,00,000/- imposed on it for non-execution of BBA and the other one for permitting it to raise demand qua HVAT as it did not opt for composition scheme dated 24.09.2015 notified by the excise department. It is pleaded by the respondent/builder that BBA was already executed on 17.09.2021 and a copy of the same could not be placed on file. Even that fact is not disputed on behalf of the complainant/allottee. So, in view of the factual position the order dated 08.03.2022 vide which the authority imposed a penalty on builder for non-executing the BBA between the parties is hereby ordered to be rectified and withdrawn.
19. Secondly, it is pleaded on behalf of the builder that the authority while passing order dated 08.03.2022 observed with regard to the promoter opting for composition scheme, 2017 notified by Excise and Taxation department, Government of Haryana dated 24.09.2015 and VAT being not chargeable from the allottee. It has been argued that the promoter be allowed to raise demand for HVAT as he is not covered under the above-mentioned scheme. Though, copies of order dated 16.12.2019 and 27.01.2020 passed by the ETO cum accessing authority, Gurugram have been placed on file along with the application, but that evidence was not adduced at the time of disposal of the case. So, these documents cannot be taken not consideration for rectification of finding with regard to

HVAT and particularly when specific findings have been returned on the basis of evidence adduced by the parties. Moreover, as per proviso II to section 39 of the Act of 2016, it is provided that while rectifying any mistake apparent from the record the authority shall not amend substantive part of its order.

F. Findings on the relief sought by the complainants.

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

(i) Direct the respondent to pay interest @8.65 per centum as per the prevailing MCLR plus 2 percent, till the rightful legal possession of the flat is handed over to the complainant.

21. In the present complaint, the complainants intend to continue with the project and are 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."

22. 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

23. 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 grant 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 (07.02.2020).

24. 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., 9.30% p.a. for every month of delay on the amount paid

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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 (07.02.2020) 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.

(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**

25. 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. 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 allottee. 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 promoter has 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 not chargeable from the allottee.
- 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.

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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.

H. Directions of the authority

26. 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., 9.30% 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 (07.02.2020) or actual taking over of possession whichever is earlier.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable

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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.

27. Complaint stands disposed of.

28. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.05.2022