



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

**Complaint no. :** 5551 of 2022  
**First date of hearing:** 06.12.2022  
**Date of decision :** 28.04.2023

Neeraj Kumari,  
R/o House No. 3305-A,  
Ranjit Nagar, New Delhi- 110008.

**Complainant**

**Versus**

M/s Perfect Buildwell Pvt. Ltd.  
**Regd. Office at:** 1<sup>st</sup> 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 18.08.2022 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 project	Affordable Group Housing Colony
3.	Project area	5 acres
4.	DTCP license no.	12 of 2014 dated 10.06.2014 valid up to 09.12.2019
5.	Name of licensee	Perfect Buildwell Pvt. Ltd. & 1other
6.	RERA Registered/ not registered	<b>Registered</b> Reg. no. 152 of 2017 issued on 28.08.2017 valid up to 31.12.2019
7.	Allotment letter	24.10.2015 (page 18 of complaint)
8.	Apartment no.	03, floor 11, tower 18 admeasuring 569 sq.ft. (carpet Area) 89 sq. ft. (balcony area) (page 18 of complaint)
9.	Date of builder buyer agreement	01.12.2015 (page 20 of complaint)
10.	Date of building plan approval	08.12.2014 (page 22 of complaint)
11.	Date of environmental clearance	09.03.2015 (page 22 of complaint)
12.	Possession clause	<b>3. Possession</b> <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</i>



		<p><i>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.</i></p> <p><i>(Emphasis supplied)</i></p>
13.	Due date of possession	09.03.2019
14.	Basic sale consideration	Rs.23,20,500/- (as per SOA dated 16.12.2019) (page 45 of complaint)
15.	Paid up amount	Rs.23,55,308/- (as per SOA dated 16.12.2019) (page 45 of complaint)
16.	Occupation certificate	04.12.2019 (page 32 of reply)
17.	Offer of possession	25.01.2020 (page 47 of complaint)
18.	Possession certificate dated	28.07.2020 (page 49 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 and unit bearing no. 03, floor 11, tower 18, having carpet area 569 sq. ft. was allotted to her vide allotment letter dated 20.10.2015. Thereafter, a buyer's



agreement dated 01.12.2015 was executed between the parties for a basic sale consideration of Rs.23,20,500/- and she has paid a sum of Rs.23,55,308/- against it in a time bound manner.

- II. 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 25.01.2020 alongwith various illegal charges on pretext of VAT, service tax, GST at wrong rate and thereafter handed over to her on 28.07.2020.
- III. 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.
- IV. That the respondent has not even paid any delay possession charges to the complainant till date. Therefore, she 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. To direct the respondent to execute and register conveyance deed in favour of complainant.
  - III. 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 25.01.2020 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 payment or demand 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, she 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., 30.05.2023 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(z) 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 01.12.2015, 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 01.12.2015 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., 25.03.2020 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 execute and register conveyance deed of the flat in favour of complainant.**

21. 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.
22. The possession of the subject unit has already been offered after obtaining occupation certificate on 25.01.2020 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.III Direct the respondent to pay the cost of litigation and the cost towards the mental agony faced by the complainant.**

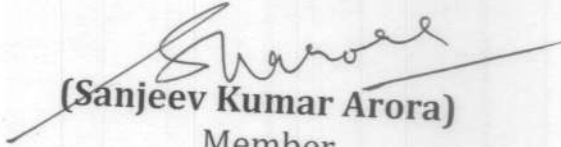
23. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. 2021(1) RCR(C), 357* has held that an allottee is entitled to claim



compensation under sections 12, 14/18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer seeking the relief of compensation.

**G. Directions of the authority**

24. 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):
- 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., 25.03.2020 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.
  - 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.
25. Complaint stands disposed of.
26. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.04.2023