

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

**Complaint no. : 5980 of 2022**  
**Date of complaint : 20.09.2022**  
**Date of decision : 27.09.2023**

1. Mahavir Singh Rawat,  
2. Asha Devi,  
R/o House No. D-730, Gali no.5,  
Pratap Vihar, Kirari Suleman Nagar,  
New Delhi- 110086.

**Complainants**

Versus

M/s Perfect Buildwell Pvt. Ltd.  
Through its Directors,  
**Regd. Office at:** 1<sup>st</sup> Floor, D-64,  
Defence Colony, New Delhi-110024.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Neeraj Pawar (Advocate)  
Ankur Berry (Advocate)

**Complainants  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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**

1. The particulars of unit details, sale consideration, the amount paid by the complainants, 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-2, Sector 104, Dwarka Expressway, Gurugram.
2.	Nature of project	Affordable Group Housing Colony
3.	Project area	1.031 acres
4.	DTCP license no.	96 of 2017 dated 08.11.2017 valid up to 07.11.2022 (as per project details submitted before Authority)
5.	Name of licensee	Perfect Buildwell Pvt. Ltd. & 1 other
6.	RERA Registered/ not registered	<b>Registered</b> Reg. no. 21 of 2019 issued on 01.04.2019 valid up to 15.08.2022
7.	Allotment letter	23.08.2019 (page 13 of complaint)
8.	Apartment no.	02, ground floor, tower 23 admeasuring 645.105 sq.ft. (carpet Area) 100 sq. ft. (balcony area) (page 13 of complaint)
9.	Date of builder buyer agreement	Not excuted
10.	Date of building plan approval	03.01.2019 (as per project details submitted before Authority)
11.	Date of environmental clearance	13.07.2018 (as per project details submitted before Authority)
12.	Possession clause	<b>Not mentioned</b>

13.	Due date of possession	03.01.2023 <i>(calculated from the date of approval of building plans as per Clause 1(iv) of the Affordable Housing Policy 2013)</i>
14.	Total sale consideration	Rs.25,00,000/- <i>(as alleged by complainants on page 5 of complaint)</i>
15.	Paid up amount	Rs.1,30,000/- <i>(as confirmed by respondent by filing affidavit dated 25.07.2023)</i>
16.	Occupation certificate	Noy yet obtained
17.	Offer of possession	Not offered
18.	Withdrawal request	23.08.2019 <i>(page 16 of complaint)</i>

**B. Facts of the complaint:**

2. The complainant has made the following submissions in the complaint:
  - I. That complainants had applied for a flat vide application no. 00425 in the respondent's project named "Zara Aavaas-2" at Sector-104, Gurugram and subsequently flat bearing no. 2, ground floor in Tower-23 having carpet area 645.105 was allotted to them vide allotment letter dated 23.08.2019 for a total sale consideration of Rs.25,000,00/- which was to be paid in equated monthly installment (EMIs) of Rs.16000/-.
  - II. That as per the requirement and request made by the respondent, the complainants paid an amount of Rs.1,30,000/- as booking amount and collectively an amount of Rs.7,94,181/- was paid by them towards the installments of the flat in question.
  - III. That when the complainant requested the respondent company about the possession of the flat, the respondent deliberately did not give any date about the same and avoided the legitimate questions required to

be answered by it. Therefore, having no other option the complainants reached the office of the respondent on 23.12.2019 and made a written request for cancellation of the flat stating some personal reason and the same was accepted by it stating that after statutory deduction cheque would be issued in the name of Sh.Mahabir Singh Rawat, but the respondent on one pretext or to the other avoided the legitimate request of the complainants without any cause or reason and deliberately avoiding their request for refund of the amount.

IV. That complainant requested the respondent several times through telephonically, personally visited the respondent office for cancellation of the flat in question and refunding the balance amount to them even after making the written request but of no use. Therefore, a notice for refund of the amount has been send by the complainants to the respondent on 02.11.2020, but neither it gave any reply nor return the amount to them. Hence, the complainants approached this Authority for effective adjudication and to bring them to justice.

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

3. The complainant sought following relief(s).

i. Direct the respondent to refund the paid-up amount along with interest.

4. 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 11.11.2022 contested the complaint on the following grounds: -



- i. That the complaint is frivolous, ill motivated and with malicious intent and is not maintainable. It is further submitted that the complainant has very strategically and deceitfully filed the present complaint.
- ii. That the complainants have miserably failed to make timely instalments as per the payment plan. The booking amount of Rs.1,30,000/- was paid by them on 17.05.2019. Thereafter on, in lieu of the said booking, the respondent vide allotment letter dated 23.08.2019 allotted an apartment bearing no. 02, ground floor in tower 23 having carpet area of 645.105 sq.ft. to them. The respondent also raised a demand of Rs.5,34,181/- on account of the allotment on the same date but the complainants did not pay the same.
- iii. That admittedly, the complainants were not in a position to pay the balance amount qua booking of the apartment in question. So, they wrote a letter dated 23.12.2019 to the responding asking it to cancel the booking of the apartment in question and the same was accepted by the respondent.
- iv. That in the cancellation letter dated 23.12.2019, it was specifically agreed by both the parties that the booking amount of Rs.1,30,000/- would be refunded after deducting of Rs.25,000/- as per the affordable group housing policy, 2013.
- v. That claim of the complainants that they have paid an amount of Rs.7,69,181/- is incorrect and denied. Further, the complainants failed to prove through any document, acknowledgement, receipts and or bank statement that any amount of Rs.6,39,181/- was ever made by them. It is further clarified that as per the statement of account entry of Rs.6,39,181/- is reversal entry to close the account, since the complainants had surrendered their unit.

- vi. That the respondent on 05.12.2020, sent an email to the complainants asking them to come and get their refund of the amount paid, yet the complainants have chosen to institute this complaint.
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 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.II Subject-matter jurisdiction**

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.*

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** and wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainants.**

**F.I Direct the respondent to refund the paid-up amount alongwith interest.**

13. The complainants submitted that they booked a residential apartment in affordable group housing colony known as "Zara Aawaas-2" in Sector-104, Gurugram and was allotted a unit bearing no. 2, ground floor in Tower-23 having carpet area 645.105 was allotted to them vide allotment letter dated 23.08.2019 for a total sale consideration of Rs.25,000,00/-. The complainants further stated that out of the said consideration of the unit, they have paid an amount of Rs.1,30,000/- vide cheque no./receipt bearing no. 18261 on 18.05.2019 and an amount of Rs.6,39,181/- was paid in cash. However, the respondent vide affidavit dated 25.07.2023 contended that as per statement of account dated 26.10.2020, the complainants have only paid an amount of Rs.1,30,000/- on 17.05.2019 and they have not paid any amount thereafter. Further the complainants have failed to prove through any document, acknowledgement, receipts or bank statement that any amount of Rs.6,39,181/- was ever made by them.
14. Therefore, on considering the documents available on record as well as submissions made by the parties, the authority is of the view that the complainants have only paid an amount of Rs.1,30,000/- to the respondent against the sale consideration of the unit in question as the complainants have failed to produce any documentary evidence to



support their claim that they have paid an amount of Rs.6,39,181/- to the respondent.

15. Further, the complainants vide letter dated 23.12.2019 stated that due to heavy financial crunch faced by them they could not pay the balance amount with regard to the said unit and hence, requested the respondent to refund the amount deposited by them. Also, the representative of the respondent makes a noting on the said letter that *"Net payment will be with deduction of Rs.25,000/- from Rs.1,30 lac" "A cheque in the name of Mahabir Singh Rawat will be issued"* which also supports the claim of respondent that the complainant has only paid an amount of Rs.1,30,000/- against the cost of the flat. Thereafter, a cheque bearing no. 862435 dated 25.11.2020 was issued to the one complainant named Mr.Mahabir Singh Rawat.
16. It is pertinent to mention clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 states as under:  
*On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat;
(cc)	Upto 2 years from the date of commencement of the project	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;



*Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.*

17. In the instant case, the date of commencement of the project was calculated from the date of obtaining E.C i.e., 13.07.2018. However, the unit was surrendered by the complainants-allottees on 23.12.2019. Since the surrender of the unit by the complainants was done after commencement of construction. Hence the respondent/builder is entitled to forfeit the amount in accordance with amended section 5(iii)(h) of the policy, 2013.
18. The authority observes that complainants are entitled for the refund of deposited amount after deduction of the amount as allowed under Affordable Group Housing Policy 2013 and amendment of 2019 which allow for deduction of 3% of the consideration money in addition to Rs.25,000/- as the complainants surrendered the unit within two year from the grant of environmental clearance. Thus, the respondent was bound to cancel the unit and return the amount as per clause 5(iii) (h) of the policy, 2013 as amended by the State Government on 05.07.2019 along with prescribed rate of interest i.e., @10.75% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

**G. 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):
- The respondent/promoter is directed to refund the paid-up amount of Rs.1,30,000/- after deduction of 3% of the consideration money in



addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @10.75% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.09.2023