

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

Complaint no. : 2114 of 2023
Date of decision : 22.12.2023

Mr. Tripurari Kumar
Apartment no.4, 3rd Floor Tower 4,
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. Saurabh Sachdeva (Advocate)

Complainant

Ms. Ankur Berry (Advocate)

Respondent

ORDER

1. The present complaint dated 31.05.2023 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 valid up to 09.12.2019
4.	RERA Registered/ not registered	152 of 2017 dated 28.08.2017
5.	Allotment letter	20.10.2015 (Page 27 of complaint)
6.	Apartment no.	04, floor 3rd, tower admeasuring 301 sq.ft. carpet area and 65 sq ft. balcony area (Page 13 of complaint)
7.	Date of builder buyer agreement	01.12.2015 (Page 32 of complaint)
8.	Date of building plan approval	08.12.2014 (Taken from another file of the same project)
9.	Date of environmental clearance	09.03.2015 (Page no 14 of reply)
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</i>

		<p><i>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>
11.	Due date of possession	09.03.2019 (Calculated from the date of environmental clearance)
12.	Total sale consideration	Rs.12,36,500/- (Page no 36 of complaint)
13.	Paid up amount	Rs.13,09,512/- (As alleged by complainant)
14.	Occupation certificate	04.12.2019 (Page no 32 of reply)
15.	Offer of possession	21.01.2020 (Page 59 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That the grievances of the complainant related to breach of contract, false promises, gross unfair trade practices and deficiency in the services committed by the respondent, perfect buildwell private limited.
 - II. That in regard to apartment no. 4, 3rd floor, tower 4 measuring 301 sq ft of carpet area and 65 sq ft of balcony area. In the project 'Zara Aavaas' at sector 104, Gurugram, Haryana.
 - III. That the complainant has paid, a sum of 13,09,512/- till 2018 which is



more than 100% of the total consideration i.e. Rs 12,36,500 on the promises and commitments that the offer of possession of the apartment will be delivered in time to the complainant.

- IV. That the respondent gave actual physical possession of the apartment i.e. on 21.01.2020 after delay of ten months despite receiving more than 100% payment.
- V. That the respondent has failed to perform his part of obligations rightfully and legally by not offering possession of the apartment on time.
- VI. That the due date of possession being 09.03.2019, the respondent has failed to offer legal and rightful possession by not executing the conveyance deed of the apartment in the favor of complainant as well as delayed possession charges at the prescribed rate as per the act 2016.
- VII. That the despite receiving more than 100% payable amount the respondent is charging/ demanding illegal charges in the name of VAT and maintenance charges from the complainant.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).
 1. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the date 09.03.2019 to 21.01.2020 in offering possession of the said apartment.
 2. Direct/Restrain the respondent for charging amount in the form of maintenance charges.
 3. Direct/Restrain deducting maintenance charges from pre-paid electricity meter of 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 20.11.2023 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 21.01.2020 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 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 Respondent has obtained Occupation Certificate only after taking necessary certificates and No Objection from the concerned departments. That further it is submitted that Occupation Certificate is 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.



- v. 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 21.01.2020.
- vi. That the complainant is misdirecting this Hon'ble Authority by reading few clauses of the Buyers Agreement saying that the maintenance of the project of 05 years will be of the Respondent. Clause 7.8 of the Buyers Agreement specifically states Apartment buyer that operational costs like cost of operation, upgradation, addition and/or replacement of the lifts, firefighting system, sewage treatment plants, common area lighting, water supply charges, garbage disposal charges, charges for cleaning and upkeep of internal pathways, green area, roads, common areas and drainage system, general watch and ward of the said colony/building etc., shall be borne and paid by the apartment buyers and the developer shall not be liable to pay the same.
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 09.03.2019 to 21.01.2020 in offering possession of the said apartment.

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 offer 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., 22.12.2023 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
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., **10.85%** 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 possession calculated from the date of environment clearance (being later) i.e. 09.03.2015 and the possession was to be delivered on 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 i.e. 21.01.2020 (Inadvertently



mentioned as till handing over of possession or OC plus two months, whichever is earlier in proceeding dated 22.12.2023) at the rate of interest of 10.85 % p.a as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II Direct/Restrain the respondent for charging amount in the form of maintenance charges.

21. The respondent in the present matter has sought the relief for restraining the respondent for charging amount in the form of maintenances charges. As per clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: *A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983.* Moreover, the authority on 11.04.2022 requested DTCP, Haryana to give clarification upon the issue of maintenance but the clarification with respect to the said issue. In response of the said letter sent by the Authority, an email dated 29.11.2022 has been received from DTCP intimating that the issue of free maintenance of the colony in terms of section 4(v) of the Affordable Group Housing Policy,



stands referred to the Government and clarification will be issued by DTCP as and when the approvals is received from the Government. Therefore, the issue of maintenance charges shall be regulated in terms of the orders of the Government as and when issued and the same would be binding on both the parties.

F.III Direct/Restrain the respondent from deducting maintenance charges from pre-paid electricity meter of the complainant.

22. As per clause 6.3 of agreement dated 01.12.2015, the complainant shall pay applicable charges on account of electricity charges of the said clause of the agreement is reproduced hereunder: -

6.3 The Apartment buyers shall be responsible to pay the concerned authorities, whether government or private, all charges pertaining to consumption of electricity and other utility services in respect of the said apartment as per the bills raised.

It is to be noted that the said clause deals with charges applicable on consumption basis but there is no specific clause dealing with one-time charges dealing with installation charges, etc. 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 etc., i.e., depending upon the area of the apartment allotted to the complainant vis-à-vis the area of all the apartment 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. The respondent is directed to provide specific details with regards to these charges.

G. Directions of the authority

23. 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 10.85% p.a. for every month of delay from the due date of possession i.e., 09.03.2019 till offer of possession i.e. 21.01.2020 (Inadvertently mentioned as till handling over of possession or OC plus two months, whichever is earlier in proceeding dated 22.12.2023) at the rate of interest of 10.85 % 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., 10.85% 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and provided under Affordable Housing Policy.
24. Complaint stands disposed of.
25. File be consigned to registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 22.12.2023