

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

Complaint no. : 1949 of 2023
First date of hearing: 28.09.2023
Date of decision : 21.12.2023

Sh. Devdutt Singh

Complainant

R/o: House No. 501, Technorats Apartments,
GHS, Plot No. 25, Sector-56, Gurugram.

Versus

M/s Perfect Buildwell Pvt. Ltd.

Respondent

Regd. Office at: 1st Floor, D-64,
Defence Colony, New Delhi-110024.

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Saurabh Sachdeva (Advocate)

Sh. Rahul Singh (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 15.05.2023 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.No.	Particulars	Details
1.	Name and location of the project	"Zara Aavaas", Sector 104, Gurugram
2.	Nature of the project	Affordable Group Housing Colony
3.	Project area	5.00 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. and 1other
6.	RERA Registered/ not registered	Registered vide no. 152 of 2017 dated 28.08.2017 valid up to 31.12.2019
7.	Unit no.	14034, 2 nd floor, Tower-14 (As per page no. 33 of the complaint)
8.	Unit area admeasuring	301 sq. ft. (Carpet area) & 65 sq. ft. (balcony area) (As per page no. 33 of the complaint)
9.	Allotment letter	18.10.2016 (As per page no. 27 of the complaint)
10.	Date of execution of apartment buyer's agreement	26.10.2016 (As per page no. 31 of the complaint) (Inadvertently mentioned as 26.10.2015 in POD dated 21.12.2023)
11.	Date of Environment Clearance	09.03.2015 (As per page no. 14 of the reply)
12.	Date of approval of building plan	08.12.2014 (Taken from another complainant of the same project)
13.	Possession clause	3.1 <i>"Unless a longer period is permitted by the DGTCP or in the policy and subject to the force majeure circumstance 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</i>

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		<i>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 charge 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> (As per page no. 36 of the complaint)
14.	Due date of possession	09.03.2019 (Due date to be calculated from the date of environment clearance i.e., 09.03.2015 being later)
15.	Total sale consideration	Rs.12,36,500/- (As per payment plan on page no. 58 of the complaint)
16.	Amount paid by the complainant	Rs.13,67,005/- (As alleged by the complainant on page no. 9 of the complaint) Rs.13,40,368/- (As per ledger account on page 60 of the complaint)
17.	Occupation Certificate/ completion certificate	04.12.2019 (As per page no. 26 of the reply)
18.	Offer of possession for fit-out	09.03.2019 (As per page no. 9 of the complaint)
19.	Physical handover of possession	27.01.2020 (As per page no. 61 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. The complainant 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.
 - II. The grievances of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiency in the services

committed by the respondent, Perfect Buildwell Private Limited in regard to Apartment no. 4, 2nd Floor, tower-14 measuring 301 sq. ft. carpet area and 65 sq. ft. balcony area in the project 'Zara Aavaas' at Sector 104, Gurugram, Haryana bought by the complainant, paying his hard-earned money.

- III. That the respondent and its associate company is in the possession of the land measuring approximately 5 acres situated in revenue estate of Sector 104, Gurugram. The Director, Town and Country Planning, Haryana (DTCP) has granted a License No. 12 of 2014 dated 10.06.2014 for construction and developing an affordable group housing colony as per the Affordable Group Housing Policy, 2013.
- IV. That the complainant has paid Rs.13,67,005/- till 2018 which is 100% amount in regard to said apartment, to the respondent but the respondent gave the actual physical possession of the apartment after a delay of ten months despite receiving all payments. The respondent has failed to perform his part of obligations rightfully and legally by not giving possession on time and not executing the conveyance deed of the apartment booked by the complainant till date. The date of offer of possession was 09.03.2019 as per the Affordable Group Housing Policy, 2013 but the respondent handover actual physical possession on 27.01.2020.
- V. That the complainant pleads that the lawful, rightful and legitimate possession of his apartment is handed over to him by executing the conveyance deed of the Apartment in the favour of the complainant as well as delayed possession charges at the prescribed rate as per the Act, 2016. It is pertinent to mention here that the respondent is charging maintenance charges of Rs.3/- per sq. ft. which is totally

illegal and in violation of Affordable Housing Policy, 2013 which are liable to be refunded to the complainant. The complainant has lost faith in the respondent, but he has faith and believes that through the Authority his rights will be protected and ensured. Hence, the present complaint is filed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date of possession i.e., 09.03.2019 to 27.01.2020.
 - ii. To direct the respondent to execute and register conveyance deed in favour of the complainant.
 - iii. Restrain the respondent from charging of maintenance charges and 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 has contested the complaint on the following grounds:
 - i. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before the Authority as the subject matter of the claim does not fall within the jurisdiction of the Authority.
 - ii. That the present complaint has been filed against the Affordable Group Housing project namely, Zara Aavaas which comprises of 19

towers/residential blocks on 5 acres. The project has been developed in phased manner and the current complainant comprises of allottee of phase 1 of the project. Phase 1 of the project was completed under the License No. 12 of 2014 dated 09.06.2019 renewed vide Memo No. LC-3048/Asstt(AK)/2019/25235 dated 10.10.2019. The building plans were approved vide Memo No. ZP-1005/SD(BS)/2014/27657 dated 08.12.2014. Further the environmental clearance for construction of the Affordable Group Housing Colony was received vide Memo No. SEIAA/HR/2016/280 dated 09.03.2015.

- iii. That the construction of the project thereafter was conducted by the respondent by abiding all terms of the approvals so received. Further upon the enactment of Act of 2016 and HRERA Rules, 2017 the respondent duly applied for the RERA registration and the same was received by the respondent vide Memo No. HRERA(Reg.)483/2017/751 dated 28.08.2017. The RERA registration No. of the phase I of the project is Regd. No. 152 of 2017.
- iv. That the respondent had 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. After the receiving of the Occupation Certificate the respondent offered the possession in phased manner and as per the Affordable Group Housing Policy, 2013.
- v. That after receiving the OC dated 04.12.2019, the respondent vide letter for offer of possession dated 27.01.2020 directed the complainant to take possession of the unit and to further clear all dues. However, the complainant chose to delay the matter on one pretext and another. The complainant was duty bound to take the possession of the residential unit within 2 months of OC however,

complainant delayed the physical taking over without any reason. The respondent constantly followed up with the allottees however, the complainant intentionally delayed taking physical possession.

- vi. That the complainant has to adhere by the terms and conditions of the agreement for the transaction regarding the unit of the complainant. 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.
- vii. That no cause of action arose against the respondent which could have resulted in filing of the present complaint. 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. Thus, on this ground alone the complaint is liable to be dismissed and the complainant should be penalised in order to establish precedent to avoid any malicious litigation in the future of similar nature.
- viii. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the said Affordable Group Housing Policy, 2013.
- ix. That the complainant is misdirecting the Authority by reading few clauses of the buyer's agreement saying that the maintenance of the

project of 5 years will be of the respondent. Clause 7.8 of the buyer's agreement specifically states 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.

- x. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead the 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 Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
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

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 objections raised by the respondent:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so

construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession

as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from 09.03.2019 to 27.01.2020

15. In the present complaint, the complainant has taken the physical handover of the unit on 27.01.2020 and is seeking delay possession charges from the due date date of possession i.e., 09.03.2019 to 27.01.2020 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."

16. 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 DGTC 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)

17. **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.

18. 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.
19. 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., 21.12.2023 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

20. 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;"

21. 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.

22. 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 26.10.2016 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 is 09.03.2019 to be calculated 4 years from the environmental clearance i.e., 09.03.2015 being later. 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 26.10.2016 executed between the parties.

23. 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 obtaining of occupation certificate plus two months i.e., 04.02.2020 or actual taking over of possession i.e., 27.01.2020, whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. Since the physical possession has been taken over on 27.01.2020 being earlier, the complainant is entitled for delayed possession charges from 09.03.2019 to 27.01.2020.

G.II Direct the respondent to execute and register conveyance deed of the flat in favour of the complainant.

24. 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.
25. The possession of the subject unit has already been offered after obtaining occupation certificate on 27.01.2020 and the same was taken by the complainant. So, the respondent is directed to get the conveyance

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deed executed within a period of three months from the date of this order.

G.III Direct the respondent not to charge maintenance charges and deduct maintenance charges from pre-paid electricity charges.

26. The respondent in the present matter is charging Rs.3/- per sq. ft. under the head of maintenance charges only. Moreover 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. 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.

H. Directions of the Authority:

27. 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 the date on which possession has been taken over physically i.e., 27.01.2020 at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainant.
 - 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.
 - iv. The rate of interest chargeable from the allottee(s) 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.
28. Complaint stands disposed of.
29. File be consigned to registry.

v.) - 
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2023