

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

Complaint no. : 3747 of 2023
First date of hearing: 30.11.2023
Date of decision : 07.03.2024

1. Sh. Vimal Gupta
2. Smt. Tanu Gupta

R/o: Apartment no.7, 4th floor, tower-2, Zara
Aavaas, Sector-104, Gurugram, Haryana.

Complainants

Versus

M/s Perfect Buildwell Pvt. Ltd.
Regd. Office at: 1st Floor, D-64,
Defence Colony, New Delhi-110024.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Saurabh Sachdeva (Advocate)
Sh. Rahul Singh (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint dated 01.09.2023 has been filed by the complainants/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 complainants, 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.	2047, 4 th floor, Tower-2 (As per page no. 36 of the complaint)
8.	Unit area admeasuring	569 sq. ft. (Carpet area) & 89 sq. ft. (balcony area) (As per page no. 36 of the complaint)
9.	Allotment letter	18.10.2016 (As per page no. 29 of the complaint)
10.	Date of execution of apartment agreement	26.10.2016 (As per page no. 33 of the complaint)
11.	Date of Environment Clearance	09.03.2015 (As per page no. 15 of the reply)
12.	Date of approval of building plan	08.12.2014 (Taken from another complainants of the same project)
13.	Possession clause	1. Possession 3.1 "Unless a longer period is permitted by the DGTCP or in the policy and subject to the force



		<p><i>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 developer from 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 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></p> <p>(As per page no. 41 of the complaint)</p>
14.	Due date of possession	09.03.2019 (Due date to be calculated 4 years from the date of environment clearance i.e., 09.03.2015 being later)
15.	Total sale consideration	Rs.23,20,500/- (As per SOA on page no. 62 of the complaint)
16.	Amount paid by the complainants	Rs.21,96,639/- (As per SOA on page no. 62 of the complaint)
17.	Occupation Certificate/ completion certificate	04.12.2019 (As per page no. 26 of the reply)
18.	Offer of possession	17.02.2020 (As per page no. 29 of the reply)



19.	Physical handover of possession	17.03.2020 (As per page no. 30 of the complaint)
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B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
- I. The complainants, Sh. Vimal Gupta and Smt. Tanu Gupta are peace loving and law-abiding citizens of India, who nurtured hitherto an un-realized dream of having their own house in upcoming societies with all facilities and standards, situated around serene and peaceful environment.
 - II. The grievances of the complainants are related 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. 7, 4th floor, tower-2 admeasuring 569 sq. ft. carpet area and 89 sq. ft. balcony area in the project 'Zara Aavaas' at sector-104, Gurugram bought by the complainants, paying their 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 department of 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 complainants have paid Rs.21,96,639/- till 2018 which is 100% amount in regard to said apartment but the respondent gave the actual physical possession of the apartment after a delay of more

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than one year despite receiving all payments. The respondent has failed to perform his part of obligations rightfully and legally, by not giving delay possession charges of the apartment booked by the complainants 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 17.03.2020.

- V. At present stage, the complainants pleads that though the lawful, rightful and legitimate possession of his apartment is handed over to him but delayed possession charges at the prescribed rate as per the Act, 2016 is not given to them. 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 complainants. The complainants have lost faith in the respondent, but they have faith that through the Hon'ble Authority their rights will be protected and ensured. Hence, the present complaint is filed.

C. Relief sought by the complainants:

4. The complainants have 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 17.03.2020.
 - ii. Direct the respondent to execute and register a conveyance deed of the apartment in favour of the complainants as per the provisions of section 17 of the Act of 2016.
 - iii. Restrain the respondent from charging of maintenance charges and deducting maintenance charges from pre-paid electricity meter of the complainants.



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:
- a. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants 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.
 - b. 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 complainants 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.
 - c. 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.

- d. 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.
- e. That after receiving the OC dated 04.12.2019, the respondent vide letter for offer of possession dated 17.02.2020 directed the complainants to take possession of the unit and to further clear all dues. However, the complainants chose to delay the matter on one pretext and another. The complainants were duty bound to take the possession of the residential unit within 2 months of OC however, complainants delayed the physical taking over without any reason. The respondent constantly followed up with the allottees however, the complainants intentionally delayed taking physical possession.
- f. That the complainants have to adhere by the terms and conditions of the agreement for the transaction regarding the unit of the complainants. As per the apartment buyer's agreement the complainants 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 complainants.

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- g. 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 complainants have very strategically and deceitfully filed the present complaint. Thus, on this ground alone the complaint is liable to be dismissed and the complainants should be penalised in order to establish precedent to avoid any malicious litigation in the future of similar nature.
- h. That the complainants have 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.
- i. That the complainants are 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.
- j. That the various contentions raised by the complainants 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 complainants



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 respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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.

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.

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 09.03.2019 to 17.03.2020

9. In the present complaint, the complainants have taken the physical handover of the unit on 17.03.2020 and are seeking delay possession charges from the due date of possession i.e., 09.03.2019 to 17.03.2020 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."

(Emphasis supplied)

10. 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

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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)

11. **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, they 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.

12. 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.
13. 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., 07.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.



14. 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;"*

15. Therefore, interest on the delay payments from the complainants 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.
16. 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 complainants as per the terms and conditions of the buyer's agreement dated 26.10.2016 executed between the parties.

17. 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 (17.02.2020) after obtaining occupation certificate plus two months i.e., 17.04.2020 or actual taking over of possession i.e., 17.03.2020, 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 17.03.2020 being earlier, the complainants are entitled for delayed possession charges from 09.03.2019 to 17.03.2020.

F.II Direct the respondent to execute and register a conveyance deed of the apartment in favour of the complainant as per the provisions of section 17 of the Act of 2016.

18. 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 complainants. 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.
19. The possession of the subject unit has already been offered after obtaining occupation certificate on 17.02.2020 and the same was taken by the complainants on 17.03.2020. So, the respondent is directed to get



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

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

20. 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.

As per the order issued by DTCP, Haryana vide clarification no. PF-27A/2024 /3676 dated 31.01.2024, it has been very clearly mentioned that the utility charges (which includes electricity bill, water bill, property tax waste collection charges or any repair inside the individual flat etc.) can be charged from the allottees as per consumptions. Accordingly, the respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per clarification by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

G. Directions of the Authority:

21. 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 complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every

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month of delay from the due date of possession i.e., 09.03.2019 till handover of physical possession i.e., 17.03.2020, being earlier 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 complainants within 2 months from the date of this order.
 - iii. The respondent shall not charge anything from the complainants 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.
22. Complaint stand disposed of.
23. File be consigned to registry.

HARERA
GURUGRAM

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2024