

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

<b>Date of Decision:</b>	<b>02.08.2024</b>
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NAME OF THE BUILDER		PERFECT BUILDWELL PRIVATE LIMITED	
PROJECT NAME		"ZARA AAVAAS"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4691/2023	Madhu Pareek V/S Perfect Buildwell Private Limited	Shri Yogesh AR of the complainant and Shri Rahul Singh Advocate
2.	CR/4678/2023	Seema V/S Perfect Buildwell Private Limited	Shri Yogesh AR of the complainant and Shri Rahul Singh Advocate
3.	CR/4692/2023	Sushil Goel V/S Perfect Buildwell Private Limited	Shri Yogesh AR of the complainant and Shri Rahul Singh Advocate
<b>CORAM:</b>			
Shri Sanjeev Kumar Arora			<b>Member</b>

**ORDER**

1. This order shall dispose of three complaints titled as above filed before this authority 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "Zara Aavaas" (Affordable Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Perfect Buildwell Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

<b>Project Name and Location</b>		<b>Perfect Buildwell Private Limited at "Zara Aavaas" situated in Sector- 104, Gurugram.</b>	
<b>Possession Clause: -</b>			
<b>3. Possession</b>			
<b>3.1</b>			
<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 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>			
<b>Occupation certificate: - 04.12.2019</b>			
<b>Complaint No. &amp; Case Title</b>	<b>CR/4691/2023 Madhu Pareek V/S Perfect Buildwell Private Limited</b>	<b>CR/4678/2023 Seema V/S Perfect Buildwell Private Limited</b>	<b>CR/4692/2023 Sushil Goel V/S Perfect Buildwell Private Limited</b>
<b>Reply status</b>	16.02.2024	16.02.2024	16.02.2024
<b>Unit no.</b>	02 on 10 <sup>th</sup> floor, Tower - 03 [ As per page no. 27 of the complaint]	04 on 9 <sup>th</sup> floor, Tower - 18 [ As per page no. 27 of the complaint]	01 on 4 <sup>th</sup> floor, Tower - 17 [ As per page no. 29 of the complaint]

<b>Area admeasuring</b>	569 sq. ft. (Carpet area) & 89 sq. ft. (balcony area) [As per page no. 27 of the complaint]	524sq. ft. (Carpet area) & 94 sq. ft. (balcony area) [As per page no. 27 of the complaint]	498 sq. ft. (Carpet area) & 100 sq. ft. (balcony area) [As per page no. 33 of the complaint]
<b>Date of apartment buyer's agreement</b>	10.08.2018 [As per page no. 29 of the complaint]	22.08.2016 [As per page no. 29 of the complaint]	22.04.2016 [As per page no. 31 of the complaint]
<b>Due date of handing over of possession</b>	09.03.2019 (Due date to be calculated 4 years from the date of environment clearance i.e., 09.03.2015, being later)	09.03.2019 (Due date to be calculated 4 years from the date of environment clearance i.e., 09.03.2015, being later)	09.03.2019 (Due date to be calculated 4 years from the date of environment clearance i.e., 09.03.2015, being later)
<b>Offer of possession</b>	11.05.2020 (As per page no. 29 of the reply)	20.01.2020 (As per page no. 29 of the reply)	31.01.2020 (As per page no. 27 of the reply)
<b>Physical handover of the unit</b>	28.06.2020 (As per page no. 81 of complaint)	05.02.2020 [As per page no. 60 of the complaint]	07.02.2020 [As per page no. 28 of the complaint]
<b>Total Consideration / Total Amount paid by the complainant(s)</b>	TSC: Rs.23,20,500/- (As per clause 1.2 of bba on page no. 41 of the complaint) AP: Rs.23,03,963/- (As stated by the complainant at page 82 of complaint)	TSC: Rs.21,43,000/- (As per clause 2.1 of bba on page no. 35 of the complaint) AP: Rs.22,83,740/- (As per statement of account at page 61 of complaint)	TSC: Rs.20,42,000/- (As per clause 2.1 of bba on page no. 35 of the complaint) AP: Rs.21,75,970/- (As stated by the complainant at page 23 of complaint)

**The complainants in the above complaint(s) have sought the following reliefs:**

1. Direct the respondent to pay delayed possession charges at the prescribed interest per annum
2. Direct the respondent to execute and register a conveyance deed of the apartment in favor of the complainant.
3. Restrain the respondent for charging amount in form of maintenance charges and deducting charges from pre-paid electricity meter of the complainant in forms of VAT and maintenance charges.

**Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

**TSC** Total Sale consideration

**AP** Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the

allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4691/2023 titled as Madhu Pareek V/S Perfect Buildwell Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

#### **A. Unit and project related details**

7. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Zara Aavaas, Sector 104, Dwarka Expressway, Gurugram.
2.	Nature of project	Affordable Group Housing Colony
3.	RERA registration	21 of 2019 valid up to 14.02.2024
4.	Allotment letter	07.06.2018 (page 27 of complaint)
5.	Apartment no.	01, fourth floor, tower 17 admeasuring 498 sq. ft. (carpet Area) 100 sq. ft. (balcony area) (page 27 of complaint)
6.	Date of agreement to sale	10.08.2018 (page 29 of complaint) - R



7.	Date of building plan approval	08.12.2014 (page 03 of reply)
8.	Date of environmental clearance	09.03.2015 (page 03 of reply)
9.	Possession clause	<b>3. Possession</b> <i>3(1) Unless a longer period is permitted by the DGTCP or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Apartment Buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the Developer from time to time and not being in default under any part of this Agreement, including but not limited to timely payment of installments of the total cost and other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the Said Apartment to the Apartment Buyer(s) within 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later.</i> <i>(Emphasis supplied)</i>
10.	Due date of possession	09.03.2019 (calculated from the date of environment clearance, being later)
11.	Total sale consideration	Rs.23,20,500/- (as per Clause 1.2 of BBA on page 41 of complaint)

12.	Paid up amount	Rs.23,03,963/- (as per ledger account on page 82 of complaint)
13.	Occupation certificate	04.12.2019 (page 26 of reply)
14.	Offer of possession	11.05.2020 (page 29 of reply)
15.	Possession certificate dated 28.06.2020 and the same has been handed over on	28.06.2020 (page 81 of complaint)

**B. Facts of the complaint:**

8. The complainant has made the following submissions in the complaint:

- I. That the respondent and its associate company is in the possession of the land measuring approximately 5 acres situated in revenue estate of Village Gurgaon, Sector 104, Tehsil and District Gurugram, Haryana. 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.
- II. That the complainant has paid Rs.23,03,963/- till 2018 which is more than 100% amount in regard to said unit, to the respondent but the respondent gave the actual physical possession of the apartment after a delay of one year 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 28.06.2020.

- III. That the complainant pleads that the lawful, rightful and legitimate possession of his unit is handed over to him by executing the conveyance deed of the apartment in the favour of 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.
- IV. That 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 which is a clear-cut violation of the Act, 2016 and Affordable Housing Policy, 2013. The complainant has also send numerous letters, emails to the respondent in regard to not charge illegal charges and gave him rightful and legal possession of the unit by executing the conveyance deed o in the favour of complainant but the respondent did not pay any heed towards the genuine request of the complainant and ignoring the letters, emails sent by the complainant from one pretext to another.

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

9. The complainant has sought following relief(s):
- Direct the respondent to pay delayed possession charges at the prescribed interest per annum.
  - Direct the respondent to execute and register a conveyance deed of the apartment in favor of the complainant.
  - Restrain the respondent for charging amount in form of maintenance charges and deducting charges from pre-paid electricity meter of the complainant in forms of VAT and maintenance charges.

10. 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:**

11. The respondent has contested the complaint on the following grounds:
- a. 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.
  - b. 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 the Real Estate (Regulation and Development) Act, 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.
  - c. 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.
- d. That after receiving the occupation certificate dated 04.12.2019, the respondent vide letter for offer of possession dated 09.02.2021 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 occupation certificate however, complainant/s delayed the physical taking over without any reason. The respondent constantly followed up with the allottees however, the complainant intentionally delayed taking physical possession.
- e. That complainant has to adhere by the terms and conditions of the agreement for the transaction regarding the unit of the complainant. That 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, 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.
- f. That no cause of action arose against the respondent company, 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.
- g. 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.
- h. 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.
- i. That the complainant is misdirecting this Hon'ble Authority by reading few clauses of the buyer's 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.

- j. That the respondent/builder has not opted for the composition scheme notified by the Excise and Taxation department, Government of Haryana. That nothing has been charged from the allottees which is outside the purview of the application form, payment schedule plan and builder buyer agreement. The demand made for HVAT is just, fair and as per applicable law.
- k. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. 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 Hon'ble Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
12. 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:**

13. 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.*

14. 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 complainant:**

**F.I Direct the respondent to pay delayed possession charges at the prescribed interest per annum.**

15. In the present complaint, the complainant 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."

**(Emphasis supplied)**

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 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)**

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., 02.08.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.
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., **11%** 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 10.08.2018 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. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement 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 10.08.2018 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 offer of possession (11.05.2020) plus two months i.e., 11.07.2020 or actual handover of possession 28.06.2020 whichever is earlier. Since possession was handed over to allottee on 28.06.2020, being earlier. Hence, delayed possession charges be calculated up to that date(28.06.2020) at prescribed rate i.e., 11 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**F.II Direct the respondent to execute and register a conveyance deed of the apartment in favor 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 04.12.2019 and the same was taken by the complainant on 28.06.2020. 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.**

**F.IV Restrain the respondent for charging amount in form of maintenance charges and deducting charges from pre-paid electricity meter of the complainant in forms of VAT and maintenance 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.*

27. 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 issued by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.

28. The respondent is directed to charge the GST as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new



tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

29. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

**G. Directions of the Authority:**

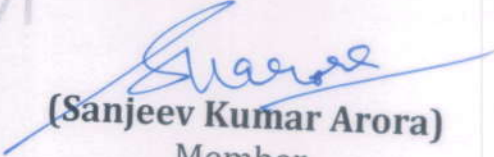
30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11% p.a. for every month

of delay from the due date of possession i.e., 09.03.2019 till offer of possession (11.05.2020) plus two months i.e., 11.07.2020 or actual handover of possession 28.06.2020 whichever is earlier. Since possession was handed over to allottee on 28.06.2020, being earlier. Hence, delayed possession charges be calculated up to that date(28.06.2020) as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.
  - iii. The respondent is directed to get the conveyance deed executed within a period of two months from the date of this order.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
  32. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
  33. Files be consigned to registry.

**HARERA**  
GURUGRAM

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.08.2024