

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

Date of decision: 24.07.2024

Name of the Builder		Perfect Buildwell Pvt. Ltd.	
Project Name		Zara Aavaas	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/102/2024	Manoj Kumar V/s Perfect Buildwell Pvt. Ltd.	Saurabh Sachdeva (Complainant) Ankur Berry (Respondent)
2.	CR/228/2024	Isha Wadhwa V/s Perfect Buildwell Pvt. Ltd.	Saurabh Sachdeva (Complainant) Ankur Berry (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
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, Sector 104, Gurugram being developed by the respondent/promoter i.e., Perfect Buildwell Pvt. Ltd. The terms and conditions of the application form, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges.

3. The details of the complaints, 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:

Project Name and Location	"Zara Aavaas", Sector 104, Gurugram.
Project area	5 acres
Nature of the project	Affordable group housing colony
DTCP license no. and other details	12 of 2014 dated 10.06.2014 Valid up to 09.12.2019 Licensee- Perfect Buildwell Pvt. Ltd. & 1other
Building plan approval dated	08.12.2014
Environment clearance dated	09.03.2015
RERA Registered/ not registered	Registered vide no. 152 of 2017 issued on 28.08.2017 Valid up to 31.12.2019
Occupation certificate	04.12.2019
Possession clause	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. "

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant	Offer of possession, Possession certificate	Relief sought
1.	CR/102/2024 Manoj Kumar V/s Perfect Buildwell Pvt. Ltd. DOF: 07.02.2024 RR: 15.04.2024	04, 10 th floor, tower 2 admea suring 524 sq.ft. carpet area and 94 sq. ft. balcon y area) [Page 27 of compla int]	01.12.20 15 (page 30 of complai nt)	09.03.2019 (calculated from the date of environmen tal clearance being later)	TC: Rs.21,43,000/- (as per BBA on page 35 of complaint) AP: Rs. 22,03,124/- [As per page 20 of complaint]	06.03.2020 (page 28 of reply) Possession certificate- 09.03.2021 (page 55 of complaint)	Delay possession charges
2.	CR/228/2024 Isha Wadhwa V/s Perfect Buildwell Pvt. Ltd. DOF: 07.02.2024 RR: 15.04.2024	04, 2 nd floor, tower 10 admea suring 301 sq.ft. carpet area and 65 sq. ft. balcon y area (page 27 of compla int)	01.03.20 16 (page 30 of complai nt)	09.03.2019 (calculated from the date of environmen tal clearance being later)	TC: Rs.12,36,500/- (as per BBA on page 35 of complaint) AP: Rs. 12,55,047/- [As per SOA on page 61 of complaint]	04.03.2020 (page 28 of reply) Possession certificate- 20.03.2020 (page 62 of complaint)	Delay possession charges

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

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/102/2024** titled as **Manoj Kumar V/s Perfect Buildwell Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

5. The particulars of the project, the details of 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:

CR/102/2024 titled as Manoj Kumar V/s Perfect Buildwell Pvt. Ltd.

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.	Project area	5 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. & 1other
6.	RERA Registered/ not registered	Registered Reg. no. 152 of 2017 issued on 28.08.2017 valid up to 31.12.2019
7.	Allotment letter	17.10.2015 (page 27 of complaint)
8.	Apartment no.	04, 10 th floor, tower 2 admeasuring 524 sq.ft. carpet area and 94 sq. ft. balcony area (page 27 of complaint)
9.	Date of builder buyer agreement	01.12.2015 (page 30 of complaint)
10.	Date of building plan approval	08.12.2014 (page 32 of complaint)

11.	Date of environmental clearance	09.03.2015 (page 14 of reply)
12.	Possession clause	<p>3. Possession</p> <p><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></p> <p><i>(Emphasis supplied)</i></p>
13.	Due date of possession	09.03.2019 (calculated from the date of environmental clearance)
14.	Total sale consideration	Rs.21,43,000/- (as per BBA on page 35 of complaint)
15.	Paid up amount	Rs.22,03,124/- [As per page 20 of complaint]
16.	Occupation certificate	04.12.2019 (page 25 of reply)
17.	Offer of possession	06.03.2020 (page 28 of reply)

18.	Possession Certificate	09.03.2021 (page 55 of complaint)
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B. Facts of the complaint

6. The complainant has made the following submissions: -

- I. That the complainant was allotted an apartment bearing no. 4, 10th Floor, Tower-2 measuring 524 sq. ft carpet area and 94 sq. ft. balcony area in the affordable group housing project of the respondent named 'Zara Aavaas' at Sector 104, Gurugram vide allotment letter dated 17.10.2015. Thereafter, an apartment buyer's agreement dated 01.12.2015 was executed between the parties for a total sale consideration of Rs.21,43,000/- against which the complainant has paid a sum of Rs.22,03,124/- till 2018. However, the respondent gave the actual physical possession of the apartment after a delay of two years despite receiving all payments.
- II. That 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 complainant till date.
- III. That as per the Affordable Group Housing Policy, 2013, the date of offer of possession was 09.03.2019, but the respondent has handed over the actual physical possession of the apartment on 09.03.2021.
- IV. That the respondent is charging maintenance charges of Rs.3/- per sq. ft. which is totally illegal and in violation of the Affordable Housing Policy, 2013 which are liable to be refunded to the complainant. Hence, the present complaint is filed.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s):

- I. Direct the respondent to pay delay possession charges as per the Act.

II. Restrain the respondent from charging amount in the form of maintenance charges.

8. 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.

9. The respondent contested the complaint by way of reply dated 15.04.2024 on the following grounds: -

- i. That after receiving the OC dated 04.12.2019, the respondent has immediately offered possession to the complainant and 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 possession of the residential unit within 2 months of OC however, complainant delayed the physical taking over without any reason.
- ii. That as per clause 2.4 of the apartment buyer's agreement, the complainant had to make payments for electricity connection charges, power backup charges, piped gas charges, etc. 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.
- iii. 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 a 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 was on account of reasons beyond the control of the respondent and the complainant has been aware of the alteration in the timeline to offer possession and completion of the project.

- iv. That the complainant is misdirecting this Authority by reading a 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 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.
 - v. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Authority, for the reasons stated above. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Authority.
10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. The authority has complete territorial and 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

12. 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.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to pay delay possession charges as per the Act.

13. 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."

14. 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)

15. The respondent/promoter has proposed to handover the possession of the subject apartment within a period of 4 years from the date of approval of building plans i.e., 08.12.2014 or grant of environment clearance i.e., 09.03.2015, whichever is later. Thus, the due date of possession come out to be 09.03.2019.

16. **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.

17. 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.

18. 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., 25.07.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.

19. 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;"*

20. Therefore, interest on the delayed 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 delay possession charges.

21. On consideration of documents available on record as well as submissions made by the parties, 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 approval of building plans i.e., 08.12.2014 or grant of environment clearance i.e., 09.03.2015, whichever is later. Therefore, the due date of handing over possession was 09.03.2019. The occupation certificate was granted by the concerned authority on 04.12.2019 and thereafter, the possession of the subject flat was offered and handed over to the complainant, vide letters dated 06.03.2020 and 09.03.2021 respectively. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 01.12.2015 to hand over the possession within the stipulated period.
22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on 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 expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

F. II Restrain the respondent from charging amount in the form of maintenance charges.

23. The issue of maintenance charges has already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in Affordable Group Housing Colonies and services for which maintenance charges can be charged from the allottees as per consumption. According, the promoter can only charge maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in Category-II of the office order dated 31.01.2024.

G. Directions of the authority

24. 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 i.e., 11% per annum for every month of delay from the due date of possession i.e., 09.03.2019 till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. 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, 2013.
 - iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% 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.

- iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
25. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of offer of possession and possession certificate is mentioned in each of the complaints.
26. Complaint stands disposed of.
27. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2024