

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

Date of order: 09.10.2024

Name of the Builder		Perfect Buildwell Pvt. Ltd.	
Project Name		Zara Aavaas	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/5126/2023	Deepakshi Sachdeva V/s Perfect Buildwell Pvt. Ltd.	Sunidhi Sharma (Complainant) Rahul Singh (Respondent)
2.	CR/5372/2023	Sharmila V/s Perfect Buildwell Pvt. Ltd.	Bhuwan Chandra (Complainant) Rahul Singh (Respondent)
3.	CR/5470/2023	Manoj Kumar V/s Perfect Buildwell Pvt. Ltd.	Sunidhi Sharma (Complainant) Rahul Singh (Respondent)
4.	CR/5471/2023	Rohit Soni V/s Perfect Buildwell Pvt. Ltd.	Sunidhi Sharma (Complainant) Rahul Singh (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 4 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/5126/2023 Deepakshi Sachdeva V/s Perfect Buildwell Pvt. Ltd. DOF: 24.11.2023 RR: 06.03.2024	3115, 11 th floor, tower 3, 524 sq.ft. carpet area and 94 sq. ft. balcony area (page 17 of complaint)	30.04.2016 (page 15 of complaint)	09.03.2019 (calculated from the date of environmental clearance being later)	TC: Rs.21,43,000/- (as per BBA on page 19 of complaint) AP: Rs. 22,28,720/- [As per SOA on page 42 of complaint]	12.03.2020 (page 28 of reply)	Delay possession charges
2.	CR/5372/2023 Sharmila V/s Perfect Buildwell Pvt. Ltd. DOF: 21.11.2023 RR: 28.02.2024	3017, 1 st floor, tower 3, 569 sq.ft. carpet area and 89 sq. ft. balcony area (page 18 of complaint)	01.12.2015 (page 16A of complaint)	09.03.2019 (calculated from the date of environmental clearance being later)	TC: Rs.23,20,500/- (as per BBA on page 20 of complaint) AP: Rs. 23,20,500/- [As per conveyance deed on page 60 of complaint]	17.02.2020 (page 28 of reply)	Delay possession charges, Litigation cost

3.	CR/5470/2023 Manoj Kumar V/s Perfect Buildwell Pvt. Ltd. DOF: 24.11.2023 RR: 06.03.2024	2046, 4 th floor, tower 2, 569 sq.ft. carpet area and 89 sq. ft. balcony area (page 16 of complaint)	14.05.20 16 (page 14 of complaint)	09.03.2019 (calculated from the date of environmental clearance being later)	TC: Rs.23,20,500/- (as per BBA on page 18 of complaint) AP: Rs. 24,42,416/- [As per payment receipts on page 43-51 of complaint]	21.01.2020 (page 26 of reply)	Delay possession charges
4.	CR/5471/2023 Rohit Soni V/s Perfect Buildwell Pvt. Ltd. DOF: 24.11.2023 RR: 06.03.2024	2041, 4 th floor, tower 2, 498 sq.ft. carpet area and 100 sq. ft. balcony area (page 17 of complaint)	01.12.20 15 (page 12 of complaint)	09.03.2019 (calculated from the date of environmental clearance being later)	TC: Rs.20,42,000/- (as per BBA on page 19 of complaint) AP: Rs. 21,81,231/- [As per payment receipts on page 44-53 of complaint]	05.02.2020 (page 27 of reply)	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/5126/2023** titled as **Deepakshi Sachdeva 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/5126/2023 titled as Deepakshi Sachdeva 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	Not provided
8.	Apartment no.	3115, 11 th floor, tower 3 admeasuring 524 sq.ft. carpet area and 94 sq. ft. balcony area (page 17 of complaint)
9.	Date of builder buyer agreement	30.04.2016 (page 15 of complaint)
10.	Date of building plan approval	08.12.2014 (page 16 of complaint)
11.	Date of environmental clearance	09.03.2015 (page 14 of reply)
12.	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

		<i>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)</i>
13.	Due date of possession	09.03.2019 (calculated from the date of environmental clearance being later)
14.	Total sale consideration	Rs.21,43,000/- (as per BBA on page 19 of complaint)
15.	Paid up amount	Rs. 22,28,720/- [As per SOA on page 42 of complaint]
16.	Occupation certificate	04.12.2019 (page 25 of reply)
17.	Offer of possession	12.03.2020 (page 28 of reply)

B. Facts of the complaint

6. The complainant has made the following submissions: -

- I. That the complainant was allotted a unit/flat bearing no.5, 11th floor, in Tower 3, having a carpet area of 524 sq. ft. and a balcony area of 94 sq. ft. in the project of the respondent named “Zara Aavaas”, Sector-104, Gurgaon vide builder buyer agreement dated 30.04.2016 for a total sale consideration is price of Rs 21,43,000/- against which the complainant has made a payment of Rs.22,28,720/- to the respondent in all.

- II. That as per buyer's agreement, the respondent had agreed to deliver the possession of the flat within 4 Years from sanctioning of the building plan or grant of environmental clearance whichever is later.
- III. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave the false impression that the work was going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant.
- IV. That despite receiving 100% payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- V. That the complainant has requested the respondent several times to deliver possession of the flat in question along with the prescribed interest on the amount deposited by the complainant, but the respondent has flatly refused to do so. Thus, the present complaint.

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.
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 06.03.2024 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 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 objections raised by the respondent/promoter:

F.I Objection regarding the project being delayed because of force majeure circumstances.

13. The respondent/promoter vide written submissions dated 07.10.2024 has raised the contention that the construction of the project was delayed due to force majeure circumstances such as ban on construction due to orders passed by NGT, EPCA, Courts/Tribunals/Authorities etc. to prevent pollution, demonetization, implementation of new tax law i.e. GST, etc. However, all the pleas advanced in this regard are devoid of merit. As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained environment clearance and building plan approval in respect of the said project on 09.03.2015 and 08.12.2014 respectively. Therefore, the due date of possession was 09.03.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency on based of

aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

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

14. 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.”

15. 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)

16. 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.

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., 09.10.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
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 delayed payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to her in case of delay possession charges.
22. 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 30.04.2016, 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 to the complainant vide offer of possession letter dated 12.03.2020. 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 30.04.2016 to hand over the possession within the stipulated period.

23. 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.

G.II Direct the respondent to pay litigation cost.

24. The complainant in CR/5372/2023 has sought an additional relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

25. 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., 11.10% 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., 11.10% 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(z) 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.
26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
27. Complaint stands disposed of.
28. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.10.2024