

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

Complaint no. : 4200 of 2023
Date of complaint : 29.09.2023
Date of order : 16.10.2024

Diksha,
R/o: - Apartment no. 1, 10th Floor, Tower-17,
Zara Aavaas, Sector-104, Gurugram, Haryana.

Complainant

Versus

Perfect Buildwell Pvt. Ltd.
Regd. Office at: - Zara Aavaas, Dhanwapur Road,
Surat Nagar, Sector-104, Gurugram-122006.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Saurabh Sachdeva (Advocate)
Rahul Singh (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| S.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. | 17101, 10 th floor, tower 17 admeasuring 498 sq.ft. carpet area and 100 sq. ft. balcony area (page 32 of complaint) |
| 9. | Date of builder buyer agreement | 01.04.2016 (page 30 of complaint) |
| 10. | Date of building plan approval | 08.12.2014 (page 31 of complaint) |
| 11. | Date of environmental clearance | 09.03.2015 (page 15 of reply) |
| 12. | Possession clause | 3. Possession <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</i> |



| | | |
|-----|--------------------------|---|
| | | <i>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> |
| 13. | Due date of possession | 09.03.2019 (calculated from the date of environmental clearance) |
| 14. | Total sale consideration | Rs.20,42,000/- (as per BBA on page 34 of complaint) |
| 15. | Paid up amount | Rs. 21,75,970/- [As per CRA on page 23 of complaint] |
| 16. | Occupation certificate | 04.12.2019 (page 26 of reply) |
| 17. | Offer of possession | 23.02.2020 (page 29 of reply) |
| 18. | Possession Certificate | 16.08.2020 (page 58 of complaint) |

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant was allotted an apartment bearing no. 17101, 10th Floor, Tower-17 measuring 498 sq. ft. carpet area and 100 sq. ft. balcony area in the project of the respondent named 'Zara Aavaas' at Sector 104, Gurugram, Haryana vide apartment buyer's agreement dated 01.04.2016 for a total sale consideration of Rs.20,42,000/-.
- II. That the complainant has paid Rs.21,75,970/- till 2018 which is 100% amount in regard to said apartment, to the respondent but the respondent gave the actual physical possession of the apartment after



a delay of one year and five months despite receiving all payments. The respondent has failed to perform his part of obligations rightfully and legally, by not giving possession on time and not executing the conveyance deed of the apartment booked by the complainant till date.

- III. That the complainant is seeking lawful, rightful and legitimate possession of the apartment by executing the conveyance deed of the apartment in her favour as well as delayed possession charges at the prescribed rate as per the Act, 2016. It is pertinent to mention here that the respondent illegally charges VAT, which is illegal as the respondent/promoter has opted composition scheme for the period 2014 to 2017 and the respondent is also 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. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to pay delay possession charges as per the Act.
 - II. Direct the respondent to register and execute conveyance deed of the apartment in favour of the complainant.
 - III. Restrain the respondent from charging amount in the form of maintenance charges.
 - IV. Direct the respondent to refund all such illegal amount which the respondent has surreptitiously charged from the complainant in the form of VAT and maintenance charges.
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 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.

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- 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 HVAT is an indirect tax and the respondent/promoter being the tax collecting agency is doing a limited job of collecting HVAT from the allottees on proportionate basis among all the allottees and depositing it with the competent department. The project in question is being developed under affordable group housing scheme but in that case also the Excise & Taxation Department has levied HVAT. It is further submitted that the promoter-respondent is not a composition dealer and the list of the composition companies who have opted for the composition scheme can cross-checked.
- vi. 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.
7. 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

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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.

10. 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.

F.II Direct the respondent to register and execute conveyance deed of the apartment in favour of the complainant.

11. 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.”

12. Clause 3.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

“3. Possession

“3(1) Unless a longer period is permitted by the DGTC or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Apartment Buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the Developer from time to time and not being in default under any part of this Agreement, including but not limited to timely payment of installments of the total cost and other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the Said Apartment to the Apartment Buyer(s) within 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later...”

(Emphasis supplied)

13. 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. The counsel for the respondent (inadvertently mentioned as counsel for the complainant) on



proceedings dated 11.09.2024 has submitted that the respondent should be given due allowance for the delay caused by the force majeure circumstances which were beyond the control of the respondent. However, neither any force majeure circumstances which were beyond the control of respondent has been pleaded in its reply nor any document in support of its claim has been placed on record by it. Accordingly, the said claim of the respondent cannot be allowed.

14. **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., 16.10.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.



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., **11.10%** by the respondent/promoter which is the same as is being granted to her 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 01.04.2016, 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 letter dated 23.02.2020. 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 01.04.2016 to hand over the possession within the stipulated period.

22. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 04.12.2019. The respondent offered the possession of the unit in question to the complainant only on 23.02.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (23.02.2020) which comes out to be 23.04.2020.
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 09.03.2019 till the expiry of 2 months from the date of offer of possession (23.02.2020)



which comes out to be 23.04.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

24. The complainant is seeking additional relief w.r.t execution of conveyance deed of the unit in question in her favour. However, vide proceeding dated 11.09.2024, it comes to the knowledge of the Authority that conveyance deed of the unit in question has already been executed in favour of the complainant in April 2024. Therefore, no direction to the same.

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

25. 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.

F.IV Direct the respondent to refund all such illegal amount which the respondent has surreptitiously charged from the complainant in the form of VAT.

26. The complainant has contended that the respondent has illegally charged amount from her towards VAT as the respondent/promoter has opted composition scheme for the period 2014 to 2017. But the version of respondent is otherwise and took a plea that HVAT is an indirect tax and the respondent/promoter being the tax collecting agency is doing a limited job of collecting HVAT from the allottees on proportionate basis among all the allottees and depositing it with the



competent department. The respondent further submitted that the promoter-respondent is not a composition dealer and the list of the composition companies who have opted for the composition scheme can be cross-checked. The Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

G. Directions of the authority

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate 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 (23.02.2020) i.e., upto 23.04.2020 only.
 - 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(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.
28. Complaint stands disposed of.
29. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.10.2024

HARERA
GURUGRAM