

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

Complaint no. : 5404 of 2023
Date of complaint : 20.11.2023
Date of order : 23.10.2024

Manoj Kumar and Kirti Kukreti,
Both R/o: - Apartment no. 2, 14th Floor, Tower-17,
Zara Aavaas, Sector-104, Gurugram, Haryana.

Complainants

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)
Ankur Berry (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.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.	17142, 14 th floor, tower 17 admeasuring 569 sq.ft. carpet area and 89 sq. ft. balcony area (page 34 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 33 of complaint)
11.	Date of environmental clearance	09.03.2015 (page 14 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 in default under any part of this</i>



		<i>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)
14.	Total sale consideration	Rs.23,20,500/- (as per BBA on page 36 of complaint)
15.	Paid up amount	Rs.24,13,321/- [As per SOA on page 60 of complaint]
16.	Occupation certificate	04.12.2019 (page 24 of reply)
17.	Offer of possession	15.01.2020 (page 28 of reply)
18.	Possession Certificate	21.01.2020 (page 59 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants were allotted an apartment bearing no. 2, 14th Floor, Tower-17 measuring 569 sq. ft. carpet area and 89 sq. ft. balcony area in the project of the respondent named 'Zara Aavaas' at Sector 104, Gurugram, Haryana vide apartment buyer's agreement dated 01.12.2015 for a total sale consideration of Rs.23,20,500/-.
- II. That the complainants have paid Rs.24,13,321/- 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 10 months despite receiving all payments. The respondent



has failed to perform his part of obligations rightfully and legally, by not giving delay possession charges till date.

- III. That the date of offer of possession was 09.03.2019 as per Affordable Group Housing Policy, 2013 but the respondent handed over actual physical possession on 21.01.2020.
- IV. That 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 complainants. Hence, the present complaint.

C. Relief sought by the complainants:

4. The complainants have 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.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by way of reply dated 28.02.2024 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.
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 complainants.

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

11. In the present complaint, the complainants intend to continue with the project and are 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.
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., 23.10.2024 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 complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them 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 to the complainants vide letter dated 15.01.2020. 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 01.12.2015 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 allottees 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-allottees 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 complainants 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 complainants 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 allottees 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 allottees, 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. Complaint stands disposed of.
26. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.10.2024