

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

Complaint no. : 291 of 2024
Date of complaint : 19.02.2024
Order pronounced on: 13.02.2025

Sajal Tuli
R/o: Apartment no.4, 13th floor, tower-02, Sector-104,
Zara Aavaas, Gurugram

Complainant

Versus

M/s Perfect Buildwell Private Limited
Registered office: H&O House, D-64, Defence Colony,
New Delhi-110024

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Saurabh Sachdeva, Advocate

Complainant

Ms. Ankur Berry, Advocate

Respondent

ORDER

1. The present complaint has been filed by the complainants/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*.

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A. Project and unit 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.No.	Particulars	Details
1.	Name and location of the project	"Zara Aavaas", Sector 104, Gurugram
2.	Nature of the project	Affordable Group Housing Colony
3.	Project area	5.00 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. and lother
6.	RERA Registered/ not registered	Registered Vide no. 152 of 2017 dated 28.08.2017 Valid up to 31.12.2019
7.	Unit no.	2134, 13 th floor, Tower-2 (As per page no. 34 of the complaint)
8.	Unit area admeasuring	524 sq. ft. (Carpet area) & 94 sq. ft. (balcony area) (As per page no. 34 of the complaint)
9.	Allotment letter	26.10.2020 (As per page no. 28 of the complaint)
10.	Date of execution of apartment agreement buyer's	26.10.2020 (As per page no. 30 of the complaint)
11.	Date of Environment Clearance	09.03.2015 (As per page no. 15 of the reply)
12.	Date of approval of building plan	08.12.2014 (Taken from another complainant of the same project)



13.	Possession clause	3.1 <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 instalments 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> <i>(As per page no. 39 of the complaint)</i>
14.	Due date of possession	09.03.2019 (Due date to be calculated from the date of environment clearance i.e., 09.03.2015, being later)
15.	Total sale consideration	Rs.21,43,000/- (As per payment plan on page no. 59 of the complaint)
16.	Amount paid against the unit	Rs.22,28,720/- (As per revised SOA on page no. 63 of the complaint)
17.	Occupation Certificate/ completion certificate	04.12.2019 (As per page no. 26 of the reply)



18.	Offer of possession	26.10.2020 (As per page no.29 of the reply)
19.	Physical handover of possession	07.11.2020 (As per page no.62 of the complaint)

B. Facts of the complaint:

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

- I. The complainant, Sh. Manik Kapoor is a peace loving and law-abiding citizen of India, who nurtured hitherto an un-realized dream of having his own house in upcoming societies with all facilities and standards, situated around serene and peaceful environment.
- II. The grievances of the complainant is related to breach of contract, false promises, gross unfair trade practices and deficiency in the services committed by the respondent, Perfect Buildwell Private Limited in regard to apartment no. 7, 9th floor, tower-18admeasuring 569 sq. ft. carpet area and 89 sq. ft. balcony area in the project 'Zara Aavaas' at sector-104, Gurugram bought by the complainant, paying his hard earned money.
- III. That the respondent and its associate company is in the possession of the land measuring approximately 5 acres situated in revenue estate of sector-104, Gurugram. The department of 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.
- IV. That the complainant has paid Rs.25,32,811/- till 2018 which is 100% amount in regard to said apartment but the respondent gave the actual physical possession of the apartment after a delay of more than one year despite receiving all payments. 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. 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 20.09.2020.

- V. At present stage, the complainant pleads that though the lawful, rightful and legitimate possession of his apartment is handed over to him but delayed possession charges at the prescribed rate as per the Act, 2016 is not given to him. 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. The complainant has lost faith in the respondent, but he has faith and believes that through the Hon'ble Authority his rights will be protected and ensured. Hence, the present complaint is filed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date of possession i.e., 09.03.2019 to 07.11.2020.
 - Direct the respondent to execute and register a conveyance deed of the apartment in favour of complainant as per the provision of section 17 of the Act, 2016.
 - Restrain the respondent from charging of maintenance charges and deducting maintenance charges from pre-paid electricity meter of the complainant.
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.

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D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- a. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before the Authority as the subject matter of the claim does not fall within the jurisdiction of the Authority.
 - b. 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.
 - c. 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 Act of 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.
 - d. 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

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Occupation Certificate the respondent offered the possession in phased manner and as per the Affordable Group Housing Policy, 2013.

- e. That after receiving the OC dated 04.12.2019, the respondent vide letter for offer of possession dated 18.03.2020 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 OC however, complainant delayed the physical taking over without any reason. The respondent constantly followed up with the allottees however, the complainant intentionally delayed taking physical possession.
- f. That the complainant has to adhere by the terms and conditions of the agreement for the transaction regarding the unit of the complainant. 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 (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.
- g. That no cause of action arose against the respondent 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.

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- h. 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.
- i. That the complainant is misdirecting the Authority by reading few clauses of the buyer's agreement saying that the maintenance of the project of 5 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.
- j. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead the Authority for the reasons stated above. That 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 Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. 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:

8. 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.

9. 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 from 09.03.2019 to 07.11.2020.

10. In the present complaint, the subject unit was initially allotted to Mrs. Santosh Tuli vide allotment letter dated 19.10.2015. However, the original allottee expired on 03.04.2018 and upon the death of original allottee, the unit was re-allotted to the present complainant on 26.10.2020 and a fresh apartment buyer's agreement stands executed only on 26.10.2020 between the present complainant and respondent and possession of the subject unit was stands offered on 26.10.2020. Thereafter, the present complainant has taken the physical handover of the subject unit on 07.11.2020 and is seeking delay possession charges from the due date of possession i.e., 09.03.2019 to 07.11.2020 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)

11. Clause 3.1 of the buyer's agreement dated 26.10.2020 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)

12. On consideration of the circumstances, the documents and submissions made by the parties. The Authority observes that by virtue of clause 3.1 of the agreement executed between the parties on 26.10.2020 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. Further observes that the subject unit was originally allotted to Mrs. Santosh Tuli vide allotment letter dated 19.10.2015. The original allottee expired on 03.04.2018, and thereafter on 17.02.2020, after 1 year 10 months, the present complainant requested the respondent to transfer the allotment of subject unit into his favour. After perusal of documents provided by the present complainant to the respondent for the purpose for transfer of allotment into his favour, the respondent has issued a fresh allotment on 26.10.2020 for the subject unit and both the parties entered into buyer's agreement on 26.10.2020 and possession of the subject unit was offered on 26.10.2020. Thereafter, on 07.11.2020, the physical possession of the subject unit was taken over by the present complainant.
13. Therefore, it can be said that in the instant complaint, the present complainant does not stepped into shoes of original allottee as he instead of endorsement entered into subject unit by way of issuance of fresh allotment and entering into a fresh buyer's agreement w.r.t subject unit **and has waived his right to claim delay in possession charges for the period of delay by entering into a fresh buyer's agreement on 26.10.2020, subsequent to the due date of possession.** Furthermore, the complainant took possession of the subject unit only on 26.10.2020, which was after the

receipt of the occupation certificate on 04.12.2019. Consequently, it can also be stated that the complainant has not suffered any loss due to delays in the completion of the project. Therefore, the Authority is of the view, that no case for delay in possession charges made out and hence is hereby dismissed.

F.II Direct the respondent to execute and register a conveyance deed of the apartment in favour of complainant as per the provision of section 17 of the Act, 2016.

14. The complainant is seeking direction to respondent to execute the conveyance deed of the apartment in favour of the complainant. The complainant has taken possession of the allotted unit on 08.09.2020 upon offer of possession dated 12.08.2020 of the unit in question. Whereas the possession was offer after obtaining of occupation certificate on 04.12.2019 as per clause of the agreement. the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

8. Execution and registration of conveyance deed:

8.1 The developer, upon completion of construction of the said apartment and/or after obtaining occupation certificate, shall transfer the said apartment by executing and registering a conveyance deed in respect thereof in favour of the apartment buyer(s), provided that the apartment buyer(s) fulfils the entire obligations as stated in this agreement. The apartment buyer(s) agrees that no ownership, interest, title or control in the said apartment accrues to the apartment buyer(s) prior to the registration of the conveyance deed for the said apartment.

15. It is to be further noted that section 11 (4) (f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.

16. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

17. As occupation certificate of the unit has been obtained from the competent authority on 04.12.2019, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the conveyance deed in favour of the complainants after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days 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.

18. 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.

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

G. Directions of the Authority:

20. 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 execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant.
- ii. The respondent is directed to charge the maintenance/use/utility charges from the complainants-allottees on consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification no. PF-27A/2024/3676 dated 31.01.2024.

21. Complaint stands disposed of.

22. File be consigned to registry.

Dated: 13.02.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram