

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

Complaint no.	:	5424 of 2024
Date of complaint	:	08.11.2024
Date of decision	:	27.05.2025

Zara Aavaas Buyers Association

R/o: Apartment no. 1, 1st floor, tower 13, Zara
Aavaas, Sector 104, Gurugram, Haryana
Versus

M/s Perfect Buildwell Pvt. Ltd.

Registered office at: H & O House, D-64, Defence
colony, New Delhi-110024

Complainant

Respondent

Coram:

Sh. Arun Kumar
Sh. Ashok Sangwan
Sh. Vijay Kumar Goyal

**Chairperson
Member
Member**

APPEARANCE:

Mr. Saurabh Sachdeva (Advocate)
Ms. Ankur Berry (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant association 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 there under or to the allottees as per the agreement for sale executed *inter se*.

A. Facts of the complaint:

2. The complainant has made the following submissions in the complaint:
- The Complainant, Ms. Deepti Shukla is a General Secretary and authorised representative of Zara Aavaas Buyers Association to file this complaint before Hon'ble Authority and a peace loving and law-abiding citizen of India. The grievances of the Complainant relate 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. 4, 1st Floor, 13th tower measuring 301 square feet carpet area and 65 square feet balcony area in the project 'Zara Aavaas' at Sector 104, Gurugram, Haryana bought by the Complainant, paying her hard-earned money.
 - It is stated that the respondent and its associate company is in the possession of the land measuring approximately 5 acres situated in revenue estate of village Gurgaon, Sector 104, Tehsil and District Gurugram, Haryana. The Director, 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.
 - The complainant has paid ₹13,17,565/- 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 despite receiving all payments. The respondent has failed to perform his part of obligations rightfully and legally, by not providing the basic facilities and amenities and not developing the project as per layout plan which is committed by the respondent.
 - The builder has failed to provide a legitimate and lawful possession of the apartment to the complainant by not providing the basic facilities

and amenities and not developing the project as per layout plan which is committed by the respondent like electricity infrastructure, free maintenance facility as per Affordable Housing Policy, 2013 etc. Due to which the complainant has lost complete faith in the respondent. Thus, the complainant seeks the legitimate and lawful possession of her apartment immediately by providing him basic facilities and amenities and its free maintenance, which is committed by the respondent, like electricity infrastructure (33KV), proper details of IFMS account and all development works as per approved layout plan. Hence, the present complaint is filed.

B. Relief sought by the complainant:

3. The complainant has sought following relief(s).
 - a. Direct the respondent to complete the requisite formalities in regard to the development works of the project immediately.
 - b. Direct the respondent to complete the construction of common areas infrastructural facilities and amenities like swimming pool, electricity infrastructure and sub-station and all development work approved in layout plan of the project.
 - c. Direct the respondent to provide free maintenance services as per the provision of Affordable Housing Policy, 2013.
 - d. Direct the respondent to handover the project and maintenance services to RWA after completing the development work as per approved layout plan.
 - e. Direct the respondent to provide the details of IFMS account of the project.

4. 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.

C. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds:
- a. That the Respondent is a company, registered under the Companies Act, 1956 having its registered office at D-64, Defence Colony, New Delhi-110024. That for the past 15 years the Respondent Company has been engaged in the business of Real Estate Sector and is one of the most prestigious builder and developer in the country.
 - b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The Complainant Association has misdirected in filing the above captioned complaint before this Ld. Authority as it is submitted that the principle of constructive res judicata is squarely applicable to the present matter. The Complainant Association has previously filed identical complaints in the case titled Zara Aavaas Buyers Association vs. Perfect Buildwell CR/98/21 and Zara Aavaas Buyers Association vs. Perfect Buildwell CR/4423/21 which were disposed of on two separate occasions.
 - c. That the same Complainant Association had initially filed complaint titled Zara Aavaas Buyers Association vs. Perfect Buildwell, CR/98/21 which was dismissed on 08.09.2021, since the Complainant Association had claimed relief of "Interest for every month of delay". This Hon'ble Authority thus duly dismissed the complaint while acknowledging that the delayed possession charges is to be adjudicated by the Authority in individual case and not as a relief of RWA.

- d. That thereafter the Complainant Association again filed complaint before this Hon'ble Authority titled Zara Aavaas Buyers Association vs. Perfect Buildwell CR/4423/21 wherein except the relief of delayed possession charges, the Complainant Association replicated its claims, allegations and prayers. That finally on 12.12.2023, the Complainant Association requested for withdrawal of the complaint and the same was allowed by this Hon'ble Authority. It is pertinent to note that while withdrawing the said complaint no liberty was granted to the Complainant Association to file afresh.
- e. That the Complainant Association has come before this Hon'ble Authority with unclean hands and has intentionally failed to state throughout the present complaint, that on previous two occasions also verbatim same complaint has been filed by the Complainant Association. That the intentionally hiding of the actual facts of the previous complaints' clearly shows the malicious conduct of the Complainant Association, which is attempting to harass the Respondent in any and all manner. The Complainant Association has already had two opportunities to agitate the same issues, and the matter has attained finality. Consequently, the present complaint is barred by the principle of res judicata and is therefore not maintainable.
- f. That the complaint made by the association does not fall under the jurisdiction of this Hon'ble Authority as it is neither registered with the Hon'ble RERA, Authority nor is it registerable with the Authority under the provisions of the Act of 2016, corresponding Rules of 2017 and regulations made thereunder and as such the representation should be dismissed outrightly.

- g. It may also be noted that the alleged association is engaged in illegal act of forum shopping since they had earlier filed a similar representation before DTCP, Haryana which has already been decided and also filed two similar complaints before this Hon'ble Authority. Also various complaints filed by the allottees of the project, before this Hon'ble Authority have included the relief as claimed herein, which have been adjudicated by this Hon'ble Authority.
- h. It is submitted that the present Complaint falls squarely under the provisions of Order 23, Rule 1(4)(b) of the Code of Civil Procedure (CPC), as the Complainant had previously withdrawn the Complaint in Zara Aavaas Buyers Association vs. Perfect Buildwell CR/4423/21, vide application for withdrawal. Pursuant to the said withdrawal, the Complainant is precluded from instituting any fresh suit or Complaint in respect of the same subject matter or part of the claim, as per the explicit provisions of the CPC. Therefore, the present Complaint is barred by law and is not maintainable.
- i. 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 in filing the above captioned complaint before this Ld. Authority as it is submitted that the Ld. Authority has no jurisdiction to entertain this complaint. It is submitted that Clause 24 of the all Apartment Buyer Agreement under the project, explicitly provides for dispute resolution through arbitration. In view of this clear and unequivocal arbitration clause, the parties have contractually agreed to resolve any disputes arising out of or in connection with the Agreement through arbitration.

- j. It is averred that the entity purporting to be the 'Zara Aavas Buyers Association' is, in fact, a sham and fictitious organization, concocted with the sole intent to deceive and defraud. The said association lacks legitimacy, authenticity, and legal standing, and its actions tantamount to fraud. It is submitted that the affidavit annexed to the complaint is defective, as it has not been duly notarized. Furthermore, the Board Resolution appended thereto lacks authenticity, as it is not an original document. Moreover, it is evident that the Complainant has resorted to filing repeated vexatious complaints with the sole intention of harassing and intimidating the Respondent. This abuse of process is aimed at causing undue hardship and financial strain on the Respondent, and is a clear attempt to misuse the judicial process.
- k. That the bare reading of the EXTRACT OF MEETING DATED 09.03.2024 clearly shows, that the present complaint has been filed without any authority. The fabricated record, fails to contains any basic details of the alleged Associations registration status, office bearers' details, attendance of office bearers, signatures of authorized persons, etc. Thus, it would not be unreasonable to believe that the said documents are false and fabricated.
- l. 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 alleged Complainant Association comprises of allottees of Phase 1 of the Project. That the 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. That 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.

- m. That further on 12.04.2018 the Respondent issued letter for permission to re-erect the building plans of additional area and revised building plans of Commercial Block to DTP. The said building plans were approved provisionally by the Chief Town Planner, Haryana-cum-Chairman, Building Plan Approval Committee vide office memo no. 13720 dated 04.05.2018 for inviting objections and resultantly 63 objections were received from the allottees. The objections being bilateral issues hence the permission was duly granted to the Respondent for revising the building plans upon payment of fees. Further it is pertinent to submit that the amended sanctioned plans have been allowed under Licence No. 12 of 2014 for total are of 5 Acres, Licence No. 96 of 2017 for total area of 1.03125 Acres and Licence No. 72 of 2019 for a total area of 2.28125 Acres thus the cumulative are of the project being 8.3125 Acres in Sector 104, Gurgaon
- n. That the construction of the Project thereafter was conducted by the Respondent by abiding all terms of the approvals so received and in phase wise manner. It is pertinent to submit that the present alleged Complainant Association are allottees of Phase I of Zara Aavaas. Further upon the enactment of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rule, 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. That the

- RERA registration No. of the Phase I of the project is Regd. No. 152 of 2017 and RERA Registration of ZARA Aavaas 2 is Regd No. 169 of 2019.
- o. 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. That after the receiving of the Occupation Certificate the Respondent offered the possession in phased manner and as per the Affordable Group Housing Policy, 2013.
- p. That the Respondent has obtained Occupation Certificate only after taking necessary certificates and No Objection from the concerned departments. That further it is submitted that Occupation Certificate is granted only after complete compliance of necessary approvals from fire safety department, State Environment Impact Assessment Authority and Structure Stability Certificate from Superintending Engineer (HQ) HUDA.
- q. It is submitted that the relief sought by the Complainant Association is entirely unfounded and vexatious, as it seeks to direct the Respondent to complete the requisite formalities in regard to the development works of the project immediately. This demand is nothing but a web of lies, as the Complainant Association is fully aware that the Occupation Certificate was obtained by the Respondent in 2019, which is granted only upon completion of the project by the respective departments. In light of the above, it is clear that the claim sought by the Complainant Association is not maintainable against the Respondent, as the project has been completed and the necessary certifications have been obtained.

- r. It is submitted that the relief sought by the Complainant Association is vexatious and devoid of merit. The Complainant Association's demand for completion of construction of common areas, infrastructural facilities, and amenities, such as swimming pool, electricity infrastructure, and sub-station, is entirely unfounded. The fact that the Respondent has already obtained the Occupation Certificate is conclusive proof that the project has been completed in all respects. The grant of OC is clear indication that all development work approved in the layout plan of the project has been completed, and no further work remains to be done. In view of that the Complainant Association's claim is nothing but an abuse of process, aimed at harassing the Respondent. The relief sought is therefore not maintainable, and the complaint deserves to be dismissed.
- s. It is submitted that the relief sought by the Complainant Association, directing the Respondent to provide free maintenance services as per the Affordable Housing Policy, 2013, is not maintainable in view of the clarification issued by the Director, Town and Country Planning, Haryana (DTCPH) vide Order No. PE-27A/2024/3676 dated 31.01.2023. The said clarification explicitly states the categories in which maintenance charges can be collected by the developer from the allottees in Affordable Group Housing Colonies. In this context, it is pertinent to note that the Respondent is charging maintenance fees strictly in accordance with the aforesaid clarification and within the permissible limits. Therefore, the Respondent's action are in consonance with the applicable policy framework and statutory guidelines. In light of the Complainant Association's claim for free

- maintenance services is unfounded and devoid of merit, and the relief sought is consequently not maintainable.
- t. It is submitted that the relief sought by the Complainant, directing the Respondent to handover the project and maintenance services to RWA after completing the development work as per approved layout plan, is not maintainable. This is because the development work of the project has already been completed, and the Respondent is willing to handover the maintenance work to the RWA, subject to the condition that the RWA is authentic and genuinely represents the interest of the allottees. The Respondent cannot be compelled to handover the maintenance work to any unauthorized association, as this would be in contravention of the Respondent's contractual and statutory obligations. In light of the foregoing, the Respondent's refusal to handover the project and maintenance work to an unauthorized association is justified and lawful, and the relief sought by the Complainant Association is accordingly not maintainable.
- u. It is submitted that the relief sought by the Complainant, directing the Respondent to provide details of IFMS account of the project, is not maintainable. This is because the Complainant Association has been shown to be a sham and fictitious entity, lacking legitimacy and authenticity. Consequently, the Respondent cannot be compelled to furnish sensitive financial information to an unauthorized and unrelated association. It is clarified that the Respondent is not unwilling to provide the requisite details, but is duty-bound to ensure that such information is only shared with the genuine and authentic association representing the legitimate interest of the allottees. In light of the foregoing, the Respondent's refusal to provide IFMS account details to

the Complainant Association is justified and lawful, and the relief sought by the Complainant is accordingly not maintainable.

v. It is submitted that, in view of the preliminary submissions, the Complainant Association is not entitled to any of the relief sought. Evidently, the Complainant, by filing this Complaint for the third time, is abusing the process of law. The Complainant's repeated attempts to seek relief, despite previous dismissal, demonstrate a clear intent to harass and vex the Respondent. Consequently, this Complaint is not maintainable and is barred by law, the present complaint is evidently an abuse of process.

w. In light of the preliminary submission made by the Respondent, it is respectfully submitted before the Learned Authority that the Complaint is not maintainable against the Respondent. Therefore, it is humbly prayed that the Authority may be pleased to dismiss the Complaint with cost, for the Complainant's frivolous and vexatious actions, which have resulted in a wastage of the Authority's precious time.

6. 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 complainants.

D. Jurisdiction of the authority

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

D.I. Territorial jurisdiction

8. 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.

D.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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainant.

E.I. Direct the respondent to complete the requisite formalities in regard to the development works of the project immediately.

E.II. Direct the respondent to complete the construction of common areas infrastructural facilities and amenities like swimming pool, electricity infrastructure and sub-station and all development work approved in layout plan of the project.

E.III. Direct the respondent to provide free maintenance services as per the provision of Affordable Housing Policy, 2013.

E.IV. Direct the respondent to handover the project and maintenance services to RWA after completing the development work as per approved layout plan.

E.V. Direct the respondent to provide the details of IFMS account of the project.

11. The Authority has heard the parties and considered the facts on record and after due consideration is of the view that although the respondent has pointed out that similar complaint filed by the complainant association was dismissed as withdrawn vide order dated 12.12.2023 in CR no. 4423-2021, the same does not preclude the respondent from carrying out the obligations as provided under Section 17(2) read with section 11(4)(b) & (f). The relevant provisions are reproduced hereunder for ready reference:

"Section 17

(1).....

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

Section 11(4) the promoter shall-

(a).....

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be

.....

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as

the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project)"

12. Now that the respondent has received the occupation certificate from the competent Authority on 04.12.2019, it is obligated to comply with the statutory provisions as noted above and handover the possession of the common areas to the complainant association in terms of the Act, 2016 read with Rules, 2017 and Affordable Housing Policy, 2013.
13. Ordered accordingly.
14. Complaint as well as applications, if any, stands disposed of accordingly.
15. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025