

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

Complaint no. : 880 of 2025
Date of Decision: 05.02.2026

Arti Mishra

Address: Zara Aavaas Flat no. 8014,
Dhanwapur Road Sector 104, Gurugram.

Complainant

Versus

M/S Perfect Buildwell Private Limited
Address: - D-64, Defence Colony, New Delhi,
110024.

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Birender Singh (Advocate)
Sapna Yadav (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant 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 provision of the Act or the rules and regulations made



thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Zara Aavaas", Sector 104, Gurugram
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	12 of 2014 dated 10.06.2014 valid up to 09.12.2019
4.	RERA Registered/ not registered	Registered vide no. 152 of 2017 dated 28.08.2017 valid up to 31.12.2019
5.	Unit no.	Apartment no.04, 01 st floor, Tower-08 (As per page no. 14 of complaint)
6.	Unit admeasuring	301 sq. ft. (Carpet area) & 65 sq. ft. (balcony area) (As per page no. 14 of complaint)
7.	Allotment letter	20.10.2015 (As per page no. 14 of complaint)
8.	Date of execution of buyer's agreement	01.12.2015 (As per page no. 18 of complaint)
9.	Date of Environment Clearance	09.03.2015 (As per page no. 46-56 of reply)
10.	Date of approval of building plan	08.12.2014 (Taken from another complainant of the same project)
11.	Possession clause	3.1



		<p><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></p>
12.	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)
13.	Total sale consideration	Rs.12,36,500/- (As per payment plan on page no. 45 of complaint)
14.	Amount paid by the complainant	Rs.13,01,763/- (As per SOA dated 10.03.2021 at page no. 15 of complaint as well as details of payment as mentioned in table at page 9 of reply)
15.	Occupation certificate	04.12.2019 (As per page no. 24-27 of reply)



16.	Offer	27.10.2020 (As per page no.22 of reply)
17.	Physical handover of possession	27.10.2020 (As per page no. 46 of complaint)
18.	Conveyance Deed	16.12.2022 (As per page no.27-43 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- i. That the affordable apartment no.04 on 1st floor in Tower-8, having a carpet area of 301 sq. ft. and balcony area 65 sq. ft along with two-wheeler parking in project known as Zara Aavaas within the revenue estate of Village Gurgaon, Sector-104, Gurugram had purchased by the complainant from the respondent. The complainant purchased the said unit in question for her residential purposes.
 - ii. That the complainant have been influenced and allured about the residential unit in an upcoming project of Zara Aavaas, Sector-104, Gurugram (Haryana) by the respondent' official informing the complainant that there would be world class homes with lifestyle amenities, world class engineering, construction and services conglomerate, dedicated to unwavering pursuit of excellence and innovation across the entire spectrum of infrastructure development including power transmission and distribution in the upcoming project in Sector-104, Gurgaon (Haryana).
 - iii. That relying upon the assurance of the company as well as its official, the complainant had applied for allotment of a unit/apartment in the project vide application no. 10637 and pursuant to the application, the draw of lots held on 08.10.2015 in the presence of official of DGTCP/DC, Gurugram and an apartment no.04 on 1st floor in tower-8, having a carpet area of 301 sq. ft. and balcony area 65 sq. ft along



with two wheeler parking in project known as Zara Aavaas within the revenue estate of Village Gurgaon, Sector-104, Gurugram and the pro rata share in the Common areas has been allotted vide allotment Letter dated 20.10.2015.

- iv. That as per demands raised by the respondent for the above said affordable unit, the complainant had total amount of Rs. 13,72,794/- out of total sale consideration of Rs. 12,36,500/- in the account of the respondent which is more than sale consideration amount and all the receipts regarding payments are intact with the complainant for further reference.
- v. That at the instance and motivation of respondent at the time of booking of the project namely Zara Aavaas, Sector-104, Gurugram (Haryana), an assurance was given to the complainant that the project will start very soon from the date of booking and also to deliver the possession of the flat within stipulated period i.e. four years.
- vi. That the respondent and the complainant had entered into an apartment buyers agreement to sell on dated 01.12.2015 in respect of the above said flat and as per covenant of the said agreement to sell, the possession of the above said flat to be handed over within four years from the date of approval of building plans or grant of environment clearance but it was utter dismay to the complainant that the respondent till date has not offered the possession of the above said flat to the complainant. However, the complainant is ready to make the balance sale consideration to the respondent. the respondent also issued allotment letter dated 20.10.2015.
- vii. That the respondent is private limited company incorporated under the Companies Act, 1956 and its Directors of the respondent jointly



and vicariously liable for day-to-day activities and functioning of the respondent company.

- viii. That the respondent has failed to deliver the possession of the above said unit/apartment within prescribed time period i.e. four years which is clear cut violation of the settled terms and conditions between the complainant and respondent by way of apartment buyer's agreement.
- ix. That thereafter the complainant visited to the office of the respondent and requested them to deliver the possession but initially the respondent made false and lame excuses and avoided the matter one pretext or another and in this process the respondent wasted precious time of the complainant. The respondent after causing immense harassment, mental stress & agony then after a long period i.e. more than one year of the stipulated time period, the respondent had issued a possession letter dated 27.10.2020 and the physical possession of the unit/flat was handed over to the complainant.
- x. That the complainant made several requests to the respondent to pay the compensation for delay in offering the possession to the complainant but the respondent totally ignored the bonafide request of the complainant and till date they have not paid a single penny regarding compensation for delay in offering the possession, which shows the malaifde intention of the respondent for not fulfilling their commitments and thus the respondent has committed the offence of breach of trust and cheating with the complainant knowingly and deliberately with sole intention to cause wrongful loss to the complainant and to gain wrongfully themselves.

C. The complainant is seeking the following relief:



4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay the interest on account of delay in offering the possession.
 - ii. Direct the respondent to pay an amount of Rs. 5,00,000/- on account of litigation charges.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested on the following grounds:
 - i. That it is submitted that the present complaint is barred by limitation, as the respondent made offer of possession of the unit on 27.10.2020 and complainant has filed the complaint after an unjustifiable delay of approximately 5 years. No cause of action has arisen in favour of the complainant, and the complaint appears to be a frivolous afterthought, devoid of any valid reason for the delay in filing.
 - ii. That the present complaint be dismissed as it appears to be barred by limitation and lacks merit, being a frivolous and belated attempt to assert rights as the respondent made valid offer of possession to the complainant on 27.10.2020 and the complainant has filed complaint in the year of 2025 after an unjustifiable delay of approximately 5 years.
 - iii. That it is submitted that the complainant has already received possession of the unit, pursuant to the respondent's offer of possession dated 27.10.2020 and CD has been duly executed on 21.12.2022. Notably, the occupancy certificate was duly received by



the respondent on 04.12.2019, indicating that the unit was ready for possession well before the actual handover. It is evident that the delay, if any, was attributable to the complainant, who raised various pretexts and did not take timely possession despite the respondent's efforts.

- iv. That it is pertinent to note that clause 3 of the apartment buyer's agreement explicitly stipulates that the offer of possession is subject to various contingencies, including force majeure circumstances, intervention by statutory authorities, receipt of occupation certificate, and timely payment of instalments of the total cost by the buyer. Furthermore, the said clause provides that the period of development shall be computed by excluding Sundays, Bank Holidays, enforced Government holidays, and days of cessation of work at the site in compliance with orders of any judicial or concerned State legislative body. Thus, the terms and conditions governing the offer of possession are clearly outlined in the agreement, and the respondent's obligations are subject to these stipulations.
- v. In light of the explicit terms of the apartment buyer's agreement, it is submitted that the respondent has offered possession within the stipulated timeframe, after duly accounting for exclusions such as the ban on construction, Sundays, Bank Holidays, enforced Government holidays, and cessation of work at the site. Since the offer of possession has been made within the extended timeline as per the agreement, there is no delay on the part of the respondent. Consequently, the complaint lacks merit and is liable to be dismissed forthwith.



- vi. That it is submitted that the respondent was bound to adhere with the order and notifications of the Courts and the Government.
- vii. That the complainant has filed a frivolous complaint before this Hon'ble Authority, devoid of any specific grievance against the respondent and lacking a valid cause of action. It is submitted that the relief claimed by the complainant is for DPC being from period between 09.03.2019 to 27.10.2020 however the due date of offer of possession comes to 17.01.2020 plus 6 months of covid and approx. 5 months 11 days of ban construction thus there being no delay at all. Adding to the same the mitigation circumstance being a delay of 305 days in making payments of instalments as per affordable housing policy counter acts as protection for the respondent who in spite of lack of funds duly completed the project and received OC on 04/12/2019. It is humbly submitted that the respondent has offered possession in accordance with the terms of the apartment buyer's agreement and within the stipulated timeframe, subject to the possession and force majeure clauses. Consequently, no cause of action has arisen to warrant the filing of this complaint. In light of this, it is respectfully prayed that the complaint be dismissed. The provisions of Order 7 Rule 11 of the Civil Procedure Code may be invoked to summarily reject the complaint for want of a valid cause of action and lack of merit.
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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority



8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

10. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee 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.

11. So, in view of the provisions of the Act of 2016 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 objections raised by the respondent.

F.I Objection regarding that the present complaint is barred by limitation.

12. The respondent is pleading that the present complaint is barred by limitation as the complainant have got the offer of possession on 27.10.2020 and the conveyance deed executed on 16.12.2022, the transaction between the complainant and the respondent stands concluded upon the execution of the conveyance deed and the complainant has filed the present complaint after a long delay on 17.02.2025 i.e., lapsed of 4 years, 3 months and 21 days (1574 days) of the offer of possession and after 2 years, 2 months and 1 day (794 days) after the execution of conveyance deed. Thus, the claim of the complainant is not maintainable. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the compliant on the ground of the limitation.
13. In line with the aforesaid facts and submissions made by the parties and documents placed on record, the Authority observes that the unit was allotted to the complainant on 20.10.2015, a buyer's agreement in this regard was executed on 01.12.2015. Though the possession of the unit was to be offered on or before 09.03.2019 after completion of the project but the same was offered only on 27.10.2020 after receipt of occupation certificate on 04.12.2019 and ultimately leading to execution of conveyance deed of the same on 16.12.2022. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 27.12.2020 and not from 16.12.2022. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of



limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

14. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
15. In the present matter the cause of action arose on 27.10.2020 when the possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 17.02.2025 which is 4 years 3 months and 21 days from the date of cause of action. In the present case the three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 28.02.2025. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to pay the interest on account of delay in offering the possession.**



16. The complainant applied for the allotment in the group housing project i.e., "Zara Aavaas" located in sector-104, Gurugram being developed by the respondent i.e., Perfect Buildwell Private Limited. The respondent issued an allotment letter dated 20.10.2015 in favour of the complainant and thereby intimated about the allotment of apartment no. 04, 1st floor, tower-08 in the project of the respondent. Thereafter, the builder buyer agreement has been executed between the parties on 01.12.2015 at the sale consideration of Rs.12,36,500/-. The complainant has paid a sum of Rs.13,01,763/- towards the subject unit.
17. As per documents available on record, the respondent has offered the possession of the allotted unit on 27.10.2020 after obtaining of occupation certificate from competent authority on 04.12.2019. The complainant took a plea that offer of possession was to be made in made in 2020, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
18. 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

"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."

19. **Due date of handing over possession:** The promoter has proposed to handover the possession on 09.03.2019. Therefore, the due date of handing over possession comes out to be 09.03.2019.



20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and seeking delay possession charges. However, 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.

21. 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.
22. 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., 05.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
23. 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;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3.1 of the agreement for sale dated 01.12.2015, and the due date comes out as 09.03.2019. Occupation certificate was granted by the concerned authority on 04.12.2019. 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 unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the agreement for sale dated 01.12.2015 to hand over the physical possession within the stipulated period.



26. 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 27.10.2020, 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.
27. In view of the above, the complainant is entitled for delayed possession at the prescribed rate of interest @10.80% per annum from the due date of possession till valid offer of possession after obtaining occupation certificate.

H. Directions issued by the Authority:

28. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 10.80% per annum from the due date of possession i.e., 09.03.2019 till valid offer of possession (after



- obtaining occupation certificate) made on 27.10.2020 plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
29. Complaint as well as applications, if any, stands disposed off accordingly.
30. File be consigned to registry.



(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.02.2026