

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

Complaint no. : 987 of 2020
First date of hearing: 16.04.2020
Date of decision : 08.03.2022

Ved Prakash Pal
Address: L-49 D, 1st Floor, Block-L, Saket, New
Delhi-110017.

Complainant

Versus

Perfect Buildwell Pvt. Ltd.
Regd. Office at: -D-64, Defence Colony, New
Delhi-110024.

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Ms. Monica Manchanda Advocate for the complainant
Shri Rakshith Srivastava Advocate for the respondent

ORDER

1. The present complaint dated 28.02.2020 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(5) 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No	Heads	Information
1.	Name and location of the project	"Zara Aavaas" at sector-104, Gurugram
2.	Nature of the project	Affordable group housing colony
3.	Project area	5 acres
4.	DTCP license no.	12 of 2014 issued on 10.06.2014 valid up to 09.12.2019.
5.	Name of license holder	Perfect Buildwell Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 152 of 2017 issued on 28.08.2017 valid up to 31.12.2019
7.	Apartment no.	01,3 rd floor, tower- 17 [page no. 29 of complaint]
8.	Unit measuring	598 sq. ft. of super area [Carpet area 498sq.ft. + Balcony area 100sq.ft.] [page no. 31 of complaint]
9.	Date of execution of Flat buyer's agreement	01.12.2015 [page no. 29 of complaint]
10.	Date of allotment letter	17.10.2015

		[page no. 26 of complaint]
11.	Environment clearance date (herein referred as commencement date)	09.03.2015 [as alleged by the respondent on page no. 2 of reply]
12.	Building plans date	08.12.2014 [as alleged by the respondent on page no. 02 of reply]
13.	Total consideration	Rs. 21,71,390/- [as per the statement of account on page 57 of complaint]
14.	Total amount paid by the complainant	Rs. 13,08,026/- [as per statement of account on page 57 of complaint]
15.	Percentage of Amount paid	60.23%
16.	Possession clause	<p>3. Possession</p> <p>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 instalments the total cost and other charges as per the Payment Plan, stamp duty and registration charges, the developer proposes to offer</p>

		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. The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/concerned State legislative Body. (page 36 of complaint)
17.	Due date of possession	09.03.2019 (Calculated from the date of environment clearance i.e., 09.03.2015)
18.	Offer of possession	Not offered
19.	Occupation certificate	04.12.2019. (as per annexure R1 on page no. 16 of reply)
20.	Demand letters and their reminders for remaining amount due	16.10.2017, 28.12.2017 16.04.2018, 28.06.2018, 15.09.2018(final reminder), 16.10.2018, 26.12.2018(final reminder)

B. Facts of the complaint

- That the complainant booked a unit in the project namely, Zara Aavaas located at sector 104, Gurugram, Haryana of the respondent company for the residential purpose.

4. That the complainant hails from a lower middle-class family and currently living on a rented accommodation. Therefore, the complainant decided to book a unit in the impugned project considering the fact that it was an affordable housing project.
5. That the complainant submitted an application for allotment of unit in the impugned project having carpet area of 498 sq. feet along with balcony area of 100 sq. feet. The said application form was submitted along with the earnest money of Rs. 1,02,100/- to the respondent company.
6. That pursuant to the booking, the respondent company issued allotment letter dated 17.10.2015 and after the issuance of allotment letter, the parties entered into an agreement i.e., apartment buyer's agreement dated 01.12.2015.
7. That as per agreement, the respondent company agreed to sell/ convey/ transfer the impugned unit no. 1 on 3rd Floor in tower-17 in the impugned project for total sale consideration of Rs. 20,42,000/.
8. That based on the representations and warranties made, the complainant started making payments from 15/06/2015

wherein Rs. 1,02,100/- was paid. The complainant has made a total payment Rs.13,33,026/- till date towards the sale consideration of the impugned unit.

9. That it is pertinent to mention here that the complainant was sanctioned a loan of Rs.11,55,777/- by the ICICI Bank on 21.12.2015.
10. That the agreement is a standard form of document which is biased, one sided, amounting to unfair trade practice as the complainant was compelled to sign on dotted lines in view of one-sided standard form of contract i.e., ABA.
11. That the possession of impugned unit was proposed to be handed over in accordance with clause 3.1 of agreement wherein as per the said clause, the possession date for the impugned unit was agreed to be within 48 months from the date of approval of building plan or grant of environmental clearance whichever is later.
12. That the complainant has paid more than 60% of the total sale consideration. Despite the said payments, the respondent company failed to deliver the possession in the agreed timeframe i.e., 16.10.2019 for the reasons best known to them

and the respondent company never bothered to intimate rhymes and reasoning for the delay to the complainant.

13. That the complainant visited the office of the respondent company in December 2019 and January 2020 enquiring about the status of the construction of the impugned unit. The complainant was shocked to hear from the respondent company that the allotment of the impugned unit was cancelled. The respondent company reasoned that the said cancellation was done since the complainant failed to pay the outstanding demand in time. Accordingly, the respondent company also handed over a letter dated 15.09.2018 purportedly with regard to the cancellation of which no receiving was taken from the complainant.
14. That the complainant never received the said letter dated 15.09.2018 for cancellation sent by respondent company. The respondent company has sent the letter through post at the address as mentioned in the agreement and the complainant has already been shifted his rented accommodation to S-21, ground floor, Khirki extension, Malviya Nagar, New Delhi-110017 from C-I-412, street no. 9, Sangam Vihar, New Delhi-

110080. The respondent company never sent the cancellation letter through email.

15. That the respondent company to comply with the conditions as provided under clause 5(ii)(i) of the said policy wherein it is mandated that once a notice for default has been sent a reminder may be sent within a period of 15 days. Once, the formalities are complete and the allottee still defaults in making the payment, the list of such defaulters is to be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice and failing which allotment may be cancelled. The said clause has not been reproduced for the sake of brevity. The respondent company has given no proof as to the compliance of the aforesaid publication requirement of the policy. Therefore, the cancellation is non est in law and the same needs to be set aside.
16. That the respondent company has to return the entire amount paid by the complainant after deducting Rs.25,000/- along with interest at prescribed rate in accordance with RERA Act,

2016. However, it is a matter of record that the respondent company has failed to return even the principal amount paid by the complainant much less the interest as per RERA Act, 2016 read with relevant rules even after expiry of almost one and half years from the date of purported cancellation of the impugned unit as claimed by the respondent company.

17. That the cancellation of allotment of the unit to the complainant is bad in law for the reason as stated aforesaid. Therefore, the same may set aside and the respondent may be directed handover the possession of the impugned unit to the complainant in a habitable condition once occupation certificate is received. Further, respondent company also be directed interest at prescribed rate (MCLR 2%) for the delayed period of handing over the possession calculated from the date of delivery of possession till actual handing over of possession.

C. Relief sought by the complainant:

18. The complainant has sought the following relief:
- (i) Direct the respondent to set aside the cancellation of the allotment of the impugned unit.

- (ii) Direct the respondent to handover the physical possession of the apartment.
- (iii) Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of possession i.e., from 16.10.2019 to the actual date of handing over the possession.
19. 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(5) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent.**
20. That the complaint is neither maintainable nor tenable before this Hon'ble Authority and is liable to be out-rightly dismissed.
21. That there is no cause of action to file the present complaint.
22. That the complaint is not maintainable for the reason that the apartment buyer's agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., clause 24 of the apartment buyer's agreement.

23. That the complainant has not approached this hon'ble authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed maliciously with an ulterior motive and it is nothing but a sheer abuse of process of law.
24. That the respondent being a customer-oriented company not only completed the construction of the tower in which the unit allotted was located but also obtained the occupation certificate dated 04.12.2019. It is pertinent to mention here that the building plan was approved on 08.12.2014 and environment clearance was obtained on 09.03.2015.
25. That the possession was to be offered by 09.03.2019, but due to delay at the end of DTCP in formation of policy for extension/renewal of license of affordable housing projects in Haryana, the grant of occupation certificate got delayed. Upon extension/renewal of license, the occupation certificate was granted by DTCP on 04.12.2019. Since the allotment of unit stood cancelled because of payment defaults committed by the complainant with due process, the respondent is not under any obligation to offer the possession to him in any way.

26. That the complainant himself defaulted in making timely payments of due instalment of sale consideration as duly agreed by him in the application form and agreement. The allotment of the said unit has been cancelled by adopting the due process of publication in following newspaper:

Newspaper	Dated	At page no. of reply
The Statesman, News Delhi	26.12.2018	7
Hari Bhoomi, New Delhi	26.12.2018	5
Veer Arjun, New Delhi	26.12.2018	7

27. That the ample opportunities have been provided to the complainant to clear the due instalments, but he intentionally refrained himself by making the payment. Now, since the project has been completed and occupation certificate has been granted by DTCP, he approached the hon'ble authority to seek possession of the cancelled unit. It is submitted that the

said unit is no more available with the respondent for restoration of allotment. The said project is fully sold, and many families are happily living therein after getting possession of their units.

28. That the complainant is a real estate investor who had invested his money with an intention to make profit in a short span of time. However, his calculations went wrong on account of slump in the real estate market, and he stopped making payment to the respondent. Now, he is deliberately trying to mislead this hon'ble authority by raising baseless, false and frivolous pleas. Despite of cancellation the complainant seeking possession of the cancelled unit as an afterthought, which is not possible. The instant complaint has been filed to mislead this hon'ble authority and to unnecessary harass and pressurize the respondent to submit to his unreasonable demands. It is submitted that it is the complainant who has defaulted in making payments as per agreed payment schedule. The malafide tactics adopted by the complainant cannot be allowed to succeed and the present complaint is liable to be dismissed.

F. Jurisdiction of authority

29. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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.

F. I Territorial jurisdiction

30. 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.

F. II Subject matter jurisdiction

31. 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(5) of the Act is reproduced as hereunder:

Section 11(5)

The Promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

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.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

- (i) Direct the respondent to set aside the cancellation of the allotment of the impugned unit.
- (ii) Direct the respondent to handover the physical possession of the apartment.
- (iii) Direct the respondent to pay interest at prescribed rate for the delayed period of handing over the possession calculated from the date of delivery of

possession i.e., from 16.10.2019 to the actual date of handing over the possession.

32. On consideration of the documents available on record and submissions made by both the parties, the authority observes that the complainant was allotted an apartment vide allotment letter dated 17.10. 2015. Thereafter, on 01.12.2015, a buyers' agreement was executed inter-se parties and the respondent started raising demand as per the schedule of payment annexed on page no. 56 of the complaint. The complainant as per the payment plan and statement of account has paid an amount of Rs. 13,08,026/- out of the total sale consideration of Rs. 21,71,390/-. As per the documents placed on record by the parties, the respondent raised demand vide letter dated 16.10.2017 for the amount payable on fifth instalment of Rs. 2,85,880 and the same was to be payable up to 31.10.2017. But the same was not paid by the complainant. As a result, a reminder was issued for the fifth instalment i.e., on 28.12.2017.
33. On 16.04.2018, respondent again raised demand for fifth and sixth instalments for an amount of Rs. 5,61,549 (along with

previous remaining amount) followed by a reminder letter dated 28.06.2018 for fifth and sixth instalments. On 15.09.2018 a final reminder letter was issued to the complainant towards the outstanding amount of Rs. 5,61,549.50/- and a time period of 15 days was granted to pay the amount due. Further, on 16.10.2018 the respondent again raised a demand vide letter payable upto 01.11.2018 for an amount Rs. 8,42,944/- (along with previous remaining amount). A final reminder was issued by respondent on 26.12.2018 towards the outstanding amount of Rs. 8,63,364.50/- to the complainant and 10 days' time was granted to pay the amount due.

34. In consonance of clause 5(iii) (i) of the Affordable Group Housing Policy, the respondent issued a public notice in three local newspapers i.e., The Statesman, Hari Bhoomi, Veer Arjun of New Delhi on 26.12.2018 and as per said newspaper, the defaulters including the complainant was given a time period to clear the due amount on or before 04.01. 2019. But despite this the complainant failed to pay the same. The relevant part of the Affordable housing policy 2013 is reproduced as under:

Clause 5(iii) (i) of the affordable housing policy:

"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list"

35. This shows that the respondent has followed the prescribed procedure as per clause 5(i) of the policy 2013 and cancelled the unit of the complainant after due notice and following the due procedure as prescribed. It is to be noted that after notice through newspaper on 26.12.2018, 15 days' time period was given, and the one payment was not paid within that period.
36. As per section 11(5) of Act of 2016, the promoter shall cancel the allotment in terms of agreement for sale only. The allotments in this project were made as per provisions of affordable housing policy and accordingly, this becomes part and parcel of the agreement for sale. The cancellation has been done after following the due procedure and complainant was

unable to give any reason that cancellation has not been done as per provisions of the Affordable Housing Policy.

37. The cancellation of the unit was done on 26.12.2018 and the respondent-promoter should have refunded the amount after deducting Rs.25,000/- as specified under clause 5 (iii) (i) of said Policy. The conduct of the respondent-builder is not upto the mark. Although we do not find any discrepancy or illegality in the cancellation order, but the builder is directed to refund the balance amount after deducting Rs.25,000/- with interest at the rate of 9.3% per annum (prescribed rate of interest) from 26.12.2018 till payment is made to the erstwhile allottee.
38. As the unit of the complainant stands cancelled as per the provisions of the policy on failure of the allottee to payment of instalments in time and also unit has been re allotted to a new person as per the provisions of the policy, accordingly there is no question of handing over the possession of the unit to the complainant. Hence, the complainant is also not eligible for the delay possession charges.

H. Directions of the authority


39. 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 refund the balance amount of complainant after deducting Rs.25,000/- with interest at the rate of 9.3% per annum (prescribed rate of interest) from 26.12.2018 till payment is made to the erstwhile allottee.

40. Complaint stands disposed of.

41. File be consigned to registry.


(V. K Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

HARERA
GURUGRAM
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.03.2022