


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

Complaint no. : 4126 of 2021
First date of hearing: 05.01.2022
Date of decision : 17.05.2022

Rajender Singh

Address: Palam Vihar Colony Near Lux
Academy Adjacent to Sector 23 Bhiwani
Haryana

Complainant


Versus

M/s Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: - 309, 3rd floor, JMD Pacific
Square, Sector 15, Part-II Gurugram-122001

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Ishwar Singh Sangwan Advocate for the complainant
Shri Rishab Gupta Advocate for the respondent

ORDER

1. The present complaint dated 12.10.2021 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(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 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	"Riddhi Siddhi" at sector 99, Gurgaon, Haryana
2.	Nature of the project	Affordable group housing colony
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 issued on 09.08.14 valid up to 08.08.2019
5.	Name of license holder	Pivotal infrastructure private limited
6.	RERA Registered/ not registered	Registered vide no. 236 of 2017 issued on 19.09.2017 valid up to 08.08.2019
7.	Apartment no.	802, 8 th Floor, Tower 8 [page no. 27 of complaint]
8.	Unit measuring	487 sq. ft. [page no. 27 of complaint]
9.	Date of allotment letter	05.09.2015 [page no. 46 of complaint]

10.	Date of sanctioning of building plan	17.10.2014 [as per project details]
11.	Date of environment clearance	22.01.2016 [as per project details]
12.	Date of builder buyer agreement	10.09.2015 [page no. 26 of complaint]
13.	Total consideration	Rs. 19,98,000/- [as per agreement on page no. 29 of complaint]
14.	Total amount paid by the complainant	21,54,903/- [as alleged by complainant]
15.	Possession clause	5.iii.b. of affordable housing policy "All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environment clearance whichever is later and possession of the flats shall be offered within the validity period of 4 years of such sanction /clearance."
16.	Due date of possession	22.01.2020 [calculated from the date of environment clearance as it is later]
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained

B. Facts of the complaint

3. That the present complaint is being filed by the complainant against the respondent as the respondent have, in a pre-planned manner, cheated and defrauded them and have rendered deficient services by not providing possession of the subject unit.
4. That the complainant was approached by the authorized marketing representatives and business agents of the respondent to purchase a residential unit from them. The representatives of the respondent claimed that they had completed several real estate projects and they were one of the most respected names in the real estate industry.
5. That on believing the assurance given by the respondent, the complainant in their meeting with the representatives and authorised agents of the respondent agreed to purchase residential apartment for a total sale consideration of Rs. 19,98,000/-.
6. That on 23.02.2015, the complainant booked the apartment vide application no. 1003 on 28.02.2015 by paying initial amount of Rs 1,05,000/- and till date complainant has paid total amounting to Rs. 21,54,903.38/- including interest as per demands of the respondent. The complainant also availed loan of Rs 15,85,837/- @ 9.90 per annum interest variable from Dewan Housing Finance Corporation Limited, Vipul Agora, M.G. Road, Gurugram.
7. That the respondent has issued an allotment letter in respect of the above said apartment in favour of the complainant on 05.09.2015.

8. That the complainant gradually came to realize that the promises of timely possession of the above apartment were nothing but false assurances and misrepresentations on the parts of the respondent. There has been a situation where the respondent has failed to deliver possession of the constructed apartment as per the schedule that had been promised by the respondent within 4 years i.e., 48 months as mentioned in para-no. 5(iii)(b) of apartment buyers' agreement. However, the project is incomplete till date.
9. That the complainant again contacted the representatives of the respondent to find out status of apartment handing over. The complainant sought information on the tentative timeline for possession by way of a clear and firm assurance by the respondent that they shall complete the project on time. Much to his dismay, the respondent refused to provide any such assurance.
10. That the complainant has made timely payments in good faith all along.
11. That they have not only defrauded the complainant, but also have violated the terms of the builder's buyer agreement by not offering possession within four years i.e., 48 months. It is apparent that the respondent has provided deficient services, is guilty of unfair trade practices, and has planned to fleece the complainant of their hard-earned money in a well-directed and pre-planned manner. Even today, the unit of the complainant has not completed, and maximum works are still pending. Due to this, on the one hand, the complainant is

deprived of moving into his own apartment in the pre-agreed timeframe and, on the other hand, he is suffering additional loss because of blocked capital of a very heavy amount and also caused huge loss by paying rent as the complainant is residing on rented accommodation.

12. That the complainant has till date deposited Rs. 21,54,903.38/- including interest amounting to Rs. 1,39,903.38/- in furtherance of the apartment agreement with the respondent as per their demands raised. However, the respondent has failed to deliver/offer possession of his allotted apartment unit to the complainant within stipulated time.
13. That the complainant had already paid the entire sale consideration amounting to Rs. 21,54,903/- including interest amounting to Rs. 1,39,903/- which is more than the actual sale price of the apartment and despite receiving the said amount, the respondent has knowingly, intentionally and deliberately not delivered the possession of the said unit and also not executed the conveyance deed of the said unit.
14. That the respondent is guilty of deficiency in service as per Act. The complainant has suffered on account of deficiency in service by the respondent by not delivering the possession of the unit/apartment of the complainant within time.

C. Relief sought by the complainant:

15. The complainant has sought the following relief:

- Direct the respondent to deliver the possession of the apartment with penalty for delay the possession at the prevailing rate by the authority.
 - Direct the respondent to pay the interest on the principal amount @18% p.a. from the date of payment till realization.
 - Direct the respondent to execute the conveyance deed of the subject apartment.
 - Direct the respondent to pay a cost of litigation amounting Rs. 2,00,000/-.
16. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent.**
17. That the complaint filed by the complainant is not maintainable in the present form and has been filed on the false and frivolous grounds.
18. That the complainant has not come with clean hands before this Hon'ble Form and have suppressed the true and material facts from this Hon'ble Forum.
19. That the project "Riddhi Siddhi" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 236 of 2017 dated 19.9.2017. That the said project is developed under the Scheme of Affordable Housing

Policy Scheme 2013 (amended in year 2019), and on the basis of applicable Laws, regulations, bye-laws or orders made pursuant thereto, the respondent company has invited application for allotment of project in the project.

20. That the possession of the said premises is proposed to be delivered by the respondent to the apartment allottee by January 2020 i.e., as per clause 5 (iii) (b) of the affordable housing scheme and builder buyer agreement, the possession of flats shall be offered within validity period of 4 years from the date of sanctioning of building plan or from the date of issuance of environment clearance certificate. Thus, according to the said terms the environment clearance certificate was issued late on dated 22.1.2016, thus, the proposed possession was to be handed over by January 2020.
21. That the completion of the building is delayed by reason due to highly spread of corona virus in nation, the Ministry of Home Affairs announced a complete lockdown from March 24th, 2020. The nation was apparently under the clutches of Covid- 19, and everybody was diligently trying to cope with that situation. Nationwide lockdown admits the Covid-19 pandemic has critically dislocated its migrant population. Everybody has suffered a huge monetary loss during this period of Lockdown announced by Government of India from March 24th, 2020. All the workers / labours have gone back to their hometown and, for a builder, to resume the construction at that time, has to suffer a shortage of labour force to complete the project. Thus, the lockdown due to corona virus pandemic

has adversely affected the construction companies/ promoter for which the central government and reserve bank of India, has made efficiently guidelines accordingly, to grow up the downfall for Real Estate Market in the Country. Even, then the respondent with their all-best efforts, completed the project and the respondent is in a position to hand over the possession of the said project in this year 2022.

22. That National Green Tribunal had passed the order dated 9.11.2017 completely prohibiting to carrying on construction by any person, private or government authority in the entire N.C.R. till 17th November 2017. Even the Haryana State Pollution Control Board, Panchkula had passed the order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018, passed to ban construction activities involving excavation, civil construction (excluding internal finishing work/ work where no construction material was used) were directed to remain closed in Delhi and other NCR Region / Districts from 1.11.2018 till 10.11.2018. Even more, in year 2019, The Commissioner, Municipal Corporation Gurugram vide order dated 11.10.2019, issued notification for prohibiting to carry out construction work from 11.10.2019 till 21.12.2019. It is specifically mentioned in the said order that construction activities to be completely stopped during this period.
23. Thus, in view of aforesaid order / notifications passed by the various Government agencies, the construction has been

stopped due to high rise in Pollution in Delhi NCR including the State of Haryana. Even the Hon'ble. Additional Chief Secretary, Environment and Climate Change Department, vide its memo no. 1 of 2021 dated 2.12.2021, has directed to stop carrying out construction activities due to high rise in pollution.

24. That there was completely ban on construction activities during the aforesaid period of time to complete the project from the year 2017 till year 2021. The respondent company never had any such intention to delay the construction of project, intentionally or deliberately, but being a law-abiding company, has to stop its construction work in view of aforesaid orders. That all the workers / labours went back to their hometown during the period of construction ban and, For a builder/ promoter, to resume the same speed of construction at that time, has become difficult due to shortage of labour force to complete the project.
25. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottee and to protect the interest of allottees in the real sector market. The main intention of the respondent is just to complete the project within stipulated time as per the Affordable Housing Scheme 2013.

E. Jurisdiction of authority

26. 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.

E. I Territorial jurisdiction

27. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

28. Section 11(4)(a) of the Act, 2016 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)(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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

29. 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 objections raised by the respondent.

F.1 Objection regarding delay due to force majeure.

25. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, stoppage of construction due to various orders and directions passed by hon'ble NGT, New Delhi, Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 10.09.2015, as per the possession clause of the agreement the possession of the said unit was to be delivered within 4 years from the date of approval of building plan or environment clearance, whichever is later. The due date of possession is calculated from date of environment clearance as it is later than the date of approval of building plan i.e., 22.01.2016, which comes out

to be 22.01.2020. The authority is of the view that the events taking place do not have any impact on the project being developed by the respondent. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

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 deliver the possession of the apartment with penalty for delay the possession at the prevailing rate by the authority.
 - (ii) Direct the respondent to pay the interest on the principal amount @18% p.a. from the date of payment till realization.
28. 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

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."

27. Clause 5(iii)(b) of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 5(iii)(b)-All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environment clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/clearance.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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.

29. 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.

30. 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., 17.05.2022 is 7.40%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.40% per annum.

31. 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;"*

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.40% p.a. by the respondent/promoter which is the same as is being

granted to the complainant in case of delay possession charges.

(iii) Direct the respondent to execute the conveyance deed of the subject apartment.

33. There is nothing on record to show that the respondent has applied for OC of the above-mentioned unit. So, in such a situation no direction can be given to the respondent to handover the possession of the said unit, as the possession cannot be offered till the occupation certificate for the said unit has been obtained. So, in such a situation the authority cannot give any directions for execution of conveyance deed to the respondent.

(iv) Cost of litigation of Rs. 2,00,000/-.

34. The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12,14,18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

35. On consideration of the circumstances, the evidence and other record and submissions made by the parties, 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. It is a matter of fact that flat buyer's agreement executed between the parties on 10.09.2015, the possession of the booked unit was to be delivered within a period of 4 years from the date of approval of building plan or environment clearance, whichever is later. The due date of possession is calculated from date of environment clearance as it is later than date of approval of building plan i.e., 22.01.2016, which comes out to be 22.01.2020.

36. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.40% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 22.01.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The complainant is also directed to pay the outstanding dues, if any.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.

- v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

38. Complaint stands disposed of.

39. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.05.2022



HARERA
GURUGRAM