

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

Complaint no. : 4976 of 2021
First date of hearing: 08.03.2022
Date of decision : 17.05.2022

Nazi Malhotra
Address: - K1/131, First Floor,
Chittranjan Park, Kalkaji, New Delhi

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 Sanat Garg
Shri Rishab Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 30.12.2021 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.	1102, 11 th Floor, Tower 5 (annexure P3 on page no. 34 of complaint)
8.	Unit measuring	487 sq. ft. (annexure P3 on page no. 34 of complaint)
9.	Date of allotment letter	05.09.2015



		[annexure P3 on page no. 34 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	Not executed
13.	Total consideration	Rs. 19,98,000/- [as per allotment letter on page no. 35 of complaint]
14.	Total amount paid by the complainant	Rs. 21,44,408/- [as alleged by complainant] Rs. 20,27,425/- [as per receipts annexed 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 respondent herein company engaged in construction and development of real estate projects, is a company incorporated under provisions of the companies act 1975 namely pivotal infrastructure Pvt. Ltd, having CIN No. U70109HR2006PTC03848, having its registered office at 309, 3rd Floor, JMD pacific square, sec-15, part-II, Gurgaon-122001(Haryana).
4. That in 2014-15 the respondent herein proposed to develop a residential project in an area ad measuring 6.19.375 acres, namely 'riddhi siddhi' situated at sector-99, Gurgaon. The said affordable housing project was proposed to be developed under the affordable housing policy 2013, issued by the Government of Haryana, vide town and country planning department notification dated 19.08.2013 and the respondent(s) herein as per the provisions of the affordable housing policy-2013 undertook and were obligated to hand over the physical possession of the said affordable housing project in four years.
5. That on such presentation of proposals/claims by the respondent, the complainant believing in respondent offer as genuine and trusting, applied for a residential apartment admeasuring 487 sq ft accompanied with a two-wheeler

parking space admeasuring approximately 0.8m x 2.5m at a total sale consideration of Rs. 19,98,000/- + Taxes vide application no.495 dated 17.02.2015 by submitting the prescribed 5% of the sale consideration amounting to Rs.1,00,000/- vide cheque no. 769443 and additional 20% i.e., Rs.4,00,000/- vide cheque no. 769444.

6. That on 03.09.2015 a draw was out of the applications submitted for the allotment under the said affordable housing policy-2013, and in the said draw the complaint was selected as one of the allottee.
7. That in furtherance to the selection in the above-mentioned draw of allottees, and prior deposit of 25% or Rs.5,00,000/- of the total sale consideration by the complaint, the respondent herein issued an allotment letter dated 05.09.2015 allotting the complainant a residential apartment.
8. That as per affordable housing policy respondent were obligated to handover the possession of the unit within 4 years from the date of approval of building plan or environment clearance, whichever is later.
9. That the complainant after allotment dated 05.09.2015 made a total payment of Rs. Rs. 21,44,408/- [Rs. 5,00,000/- paid prior to issuance of allotment letter + Rs. 16,44,408/- paid post issuance of allotment letter] to the respondent(s) herein till 15.05.2019 amounting to 100 % of the total sale consideration and taxes thereon.



10. That having paid the 100 % of the sale consideration and as the stipulated time of 4 years for handing over of the physical possession of the said affordable housing project as per the affordable housing policy- 2013 was over and yet there was no update from the respondent herein regarding the completion, therefore the complainant decided to visit the construction site himself and on his visit the complainant was in utter shock to see the state of the construction site which was nowhere near to completion and in a completely inhabitable state. On witnessing the status of the said affordable housing project the complainant reached out to the respondent(s), rightfully in search of the answers to which the respondent assured that they are planning to speed up the construction work and will hand over the physical possession in a month or two.
11. That when on enquiring on multiple occasions the respondent admittedly on one hand showed their inability to hand over the physical possession because of the said affordable housing project being in an incomplete stage and on the other hand the respondent herein always provided with the false assurances that the possession will be handed over in a month or two. That the complainant visited the offices of the respondent company herein and demanded the physical possession of their booked/allotted flats or to cancel their booking/

allotment and refund all the payments made to the respondent(s) by the complainant and other allottees with interest which the respondent(s) would have rightfully claimed in the event of delay of payment on the part of the allottees as per the affordable housing policy-2013 and the builder buyer's agreement. But the respondent(s) herein did not pay any head to the issues raised by the complainant as well as the other allottees.

12. That losing all his faith in and the harassment the complainant was undergoing due to the acts of the respondent, the complainant decided to seek remedies and rightful solution to the whole situation, in that process the complainant came across some shocking revelations which exposed the true wrongful conduct of the respondent herein completely shattering the complainant's trust in the respondent(s) herein. It came to the knowledge of the complainant herein that:

- That the respondent(s) herein was developing the said project against the license` no. 86 of 2014 and had obtained the registration of the said affordable housing project in 2017 under RERA vide registration no. 236 of 2017.
- That on expiry of the said obtained registration no. 236 of 2017 the respondent(s) herein applied for the

extension of the said registration before the Haryana Real Estate Regulatory Authority u/s 6 of the RERA Act, 2016 vide Application No. HARERA/GGM/REP/RC/236/2017/EXT/177/2019, wherein the Hon'ble adjudicating authority vide order dated 30-12-2019 granted the extension sought by the respondent(s), but a mere read of the said order reveals that the respondent(s) herein have obtained the said order by concealing and misrepresenting crucial facts and without providing documents in support of claims before the Hon'ble Adjudicating Authority.

13. That the complainant has lost all faith in the respondent and have till date not received physical possession of the flat allotted to the complainant neither the respondent is willing to refund the amounts paid by the complainant along with rightful interest and compensation. Therefore, after having no other remedy the complainant herein has come before this hon'ble authority to seek justice against the atrocity committed by the respondents.

C. Relief sought by the complainant:

14. The complainant has sought the following relief:

- Direct the respondent to pay delayed charge at prescribed rate of interest on amount paid by the complainant till handing over of physical possession.

15. 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.

16. That the complaint filed by the complainant is not maintainable in the present form and has been filed on the false and frivolous grounds.
17. That the complainant has not come with clean hands before this Hon'ble Forum and have suppressed the true and material facts from this Hon'ble Forum.
18. 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.
19. 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.

20. 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/ promoters 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.

21. 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.
22. 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.
23. 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.

24. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees 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

25. 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

26. 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

27. 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.

28. 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.I 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) PAuthority, 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. That as per the possession clause of the affordable housing policy 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 pay delayed charge at prescribed rate of interest on amount paid by the complainant till handing over of physical possession.

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 affordable housing policy, 2013 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.
33. 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 unit has been allotted to the allottee on 05.09.2015 under the affordable housing policy, 2013. As per the policy 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.

34. 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


35. 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(za) of the Act.
 - v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.

v.i - 
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.05.2022