

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

Complaint no. : 68 of 2022
First date of hearing: 08.03.2022
Date of decision : 17.05.2022

Dharmvir Malik
Address: - RZ/A-1/20, 2nd Floor, Mahavir
Enclave, Near Vishal Mega Mart,
Delhi-110045

Complainant

Versus

1. Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: - 309, 3rd floor, JMD Pacific
Square, Sector 15, Part-II Gurugram-122001
2. Director of Town and Country Planning,
Haryana
Address: DTP, Planning, HUDA Complex,
Sector 14, Gurugram

Respondents

CORAM:
Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:
Shri Rajan Kumar Hans Advocate for the complainant
Shri Rishab Gupta Advocate for the respondent
no. 1

ORDER

1. The present complaint dated 21.01.2022 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	M/s 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.	1108, 11 th Floor, Tower 4 (annexure P2 on page no. 25 of complaint)
8.	Unit measuring	487 sq. ft.



		(annexure P2 on page no. 25 of complaint)
9.	Date of allotment letter	05.09.2015 [annexure P1 on page no. 17 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	17.04.2016 [annexure P2 on page no. 24 of complaint]
13.	Total consideration	Rs. 19,98,000/- [as per buyer's agreement on page no. 27 of complaint]
14.	Total amount paid by the complainant	Rs. 20,94,466/- [as per receipts of payments on page no. 55-63 of complaint]
15.	Possession clause	8.1 POSSESSION "The company shall endeavour to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for project or date of receipt of all the environment clearances necessary for the completion of the

		construction and development of projects, whichever is later , subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.”
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 complainant Mr. Dharmvir Malik is R/o H.no. RZ/A-1/20, 2nd Floor, Mahavir Enclave, Near Vishal Mega Mart, Delhi-110045.
4. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, complainant falls under the category of “allottee” and is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this hon’ble regulatory authority.
5. That the respondent no. 1 M/s Pivotal Infrastructure Pvt Ltd, is a company incorporated under the Companies Act, 1956 having registered office at plot no-12, sector-4, Faridabad Haryana-121004.

6. That the respondent no. 2 is director of town and country planning, is a body under Government of Haryana, is responsible to regulate the development and also to check the haphazard development in and around towns in accordance with the provisions of respective state statutes and In order to involve the private sector in the process of urban development, the department grants licences to the private colonisers for development of residential, commercial, industrial and IT Park/cyber park colonies in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and rules framed thereunder.
7. That the respondent no. 2, has issued licence no. 86 of 2014 to respondent no. 1 to develop an affordable housing project as per the guidelines mentioned under affordable housing policy 2013, issued by Government of Haryana, vide town and country planning department's notification dated 19 August 2013.
8. That the project in question is known as "Riddhi Siddhi" at sector 99, Gurugram, Haryana which is a project under affordable housing policy 2013, issued by Government of Haryana.
9. That as per sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, respondent no. 1 falls under the category of "promoter" and is bound by the duties and obligations mentioned in the said act.
10. That in year 2015, Mr. Dharmvir Malik got information about an advertisement in a local newspaper about the affordable

housing project "Riddhi Siddhi" at Sector 99, Gurugram, Haryana. When he called on the phone number provided in the newspaper, the marketing staff of the respondent no. 1 showed a rosy picture of the project and allure with proposed specifications and invited for site visit. That the complainant visited the project site and met with local staff of respondent no. 1. Local staff of respondent no.1 gave an application form and assured that possession will be delivered within 36 months as they were told that it is a govt. Project having fixed payment instalment in every 6 months and on the last instalment, the possession will be delivered.

11. That the complainant applied for a 2 BHK residential unit in upcoming project of respondent no. 1 namely "Riddhi Siddhi" at sector 99, Gurugram, Haryana, for which the complainant had remitted Rs 1,00,000/- towards booking the unit, along with application form. The complainant got the unit in the draw of lots.
12. That on date 05.09.2015, respondent no. 1 issued an allotment letter against the above-mentioned unit for a total sale consideration of Rs. 19,98,000/-.
13. That on date 07.04.2016 builder buyer agreement was executed between the parties. That as per clause 8.1 of the agreement, the respondent no. 1 had to complete the construction of flat and handover the possession within 4 years from date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances whichever is later. This was as per Rule 1. (iv)

under the Affordable Housing Policy 2013, Notified by DTCP, Govt. of Haryana on date 19/08/2013 in the Haryana Government Gazette.

14. That till date the respondent no. 1 had called Rs 20,94,466/- for payment and the complainant had paid 20,94,466/-i.e., 100% of money called, but when complainant observed that there is no progress in construction of subject flat for a long time, he raised their grievance to respondent no. 1.
15. That the main grievance of the complainant in the present complaint is that in spite of the complainant having paid 100% of the actual amounts of flat, the respondent no. 1 has failed to deliver the possession of flat which was a core promise of the affordable housing policy, 2013.
16. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent no. 1 party and as such, they are liable to be punished and compensate the complainant.
17. That due to acts of the respondent no. 1 and of the terms and conditions of the builder buyer agreement, and of affordable housing policy 2013, the complainant have been unnecessarily harassed mentally as well as financially, therefore the respondent no. 1 is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
18. That the respondent no. 2 (DTCP, Haryana) is also liable to for their negligence to monitor the progress of the project as in the case of affordable housing, Government / DTCP Department plays an active role and when the respondent no. 1 has

miserably failed to complete the structure as per the schedule specified in builder buyer agreement and as per the Haryana affordable housing policy 2013.

C. Relief sought by the complainant:

19. The complainant has sought the following relief:

- Direct the respondent no.1 to pay interest @ prescribed rate on delayed possession since due date of possession i.e., 21.01.2020 till actual date of possession.

20. On the date of hearing, the authority explained to the respondents/promoters 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 no. 1.

21. That the complaint filed by the complainant is not maintainable in the present form and has been filed on the false and frivolous grounds.

22. 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.

23. 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.

24. 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.
25. 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.

26. 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.
27. 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.

28. 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.
29. 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

30. 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

31. 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

32. 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.

33. 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 no. 1.

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. That as per the possession clause 8.1 of the builder buyer 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/promoter. 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 no.1 to pay interest @ prescribed rate on delayed possession since due date of possession i.e., 21.01.2020 till actual date of possession.

26. 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 8.1 of the builder buyer agreement provides the time period of handing over possession and the same is reproduced below:

8.1 Expected Time for handing over Possession

"Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/

completion certificate from the competent authorities, the company shall endeavour to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for project or date of receipt of all the environment clearances necessary for the completion of the construction and development of projects, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder."

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 no. 1 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 and subsequently builder buyer agreement was executed between the parties on 17.04.2016. As per the clause 8.1 of the builder buyer agreement 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 no. 1 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 no. 1 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 no. 1 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 no. 1 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 respondent no. 1 shall not charge anything from the complainant which is not part of the builder buyer agreement.

- v. The licence of the said affordable housing scheme had been expired and registration certificate granted by the authority also stands expired on 07.08.2020 after giving covid-19 relaxation and hence the copy of this order be endorsed to the planning branch of the authority for initiating penal proceedings.

36. Complaint stands disposed of.

37. File be consigned to registry.

v.1 - 3
(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 17.05.2022

HARERA
GURUGRAM