

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

Complaint no. : 1360 of 2021
First date of hearing: 06.05.2021
Date of decision : 08.03.2022

Manoj Kumar
R/O: - H.no. 195 A, Village- Islampur,
Sector-38, South City-2, Gurugram,122001

Complainant

Versus

M/S Pivotal Infrastructure Private Limited
Regd. Office at: - 704-705, 7th floor,
JMD Pacific Square, Sector -15, Part-II,
Gurugram

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

None
Shri Rohan Gupta

Advocate for the respondent

ORDER

1. The present complaint dated 30.03.2021 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 14(3) 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, Gurugram
2.	Nature of the project	Affordable Group Housing Policy
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 valid up to 08.08.2019
5.	Name of Licensee	M/S Pivotal Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 236 of 2017 issued on 19.09.2017 up to 08.08.2019
7.	Apartment no.	608, 6 th floor, tower T-9 [annexure 3 on page no. 36 of complaint]
8.	Unit measuring	487 sq. ft. [annexure 3 on page no. 36 of complaint]
9.	Date of allotment letter	07.06.2018 [annexure 2 on page no. 26 of complaint]
10.	Date of execution of Flat	19.06.2018



	buyer's agreement	[annexure 3 on page no. 35 of complaint]
11.	Date of sanction of building plans	17.10.2014 [annexure R-2 on page no. 26 of reply]
12.	Date of environment clearances	22.01.2016 [annexure R-3 on page no. 32 of reply]
13.	Total consideration	Rs. 19,98,000/- [as per the agreement on page no. 42 of complaint]
14.	Total amount paid by the complainant	Rs. 2,00,000/- [as per the receipt information on page no. 24-25 of complaint]
15.	Due date of delivery of possession	22.01.2020 [calculated from the date of environment clearance i.e., 22.01.2016]
16.	Possession clause	Clause 1 of the affordable housing policy 1(iv) "The company shall offer to handover the possession of the apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later."
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. That the respondent is a real estate company and launched a project named as Riddhi Siddhi situated at sector 99, Gurugram.
4. That the subject matter of the present complaint is with respect to direct the respondent to use the building material of good quality, as the material being used by the respondent for erecting the construction is of inferior and low quality, which may lead to harm the property and life of the complainant and other investors/ buyers / purchasers/ allottees.
5. That respondent through its representative approached the complainant with an offer to invest in its proposed project and assured to the complainant that it has secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant and assured that the allotment letter and builder buyer agreement for the said project would be issued to him within one week of booking of made by the complainant. The complainant while relying on the representations and warranties of respondent and believing those to be true has agreed to its proposal to book a unit in the residential project.
6. That relying on the assurances the complainant booked a unit in the project and paid an amount of Rs. 2,00,000 on 21.05.2018 and Rs. 1,00,000 on 23.05.2018.

7. That the respondent on 07.06.2018, allotted the said unit in favour of the complainant, in which prices of the said unit was told to him as Rs.19,80,000/- exclusive of any applicable taxes, cess, levies or assessment of EDC /IDC.
8. That further on 19.06.2018 an agreement was executed between both the parties.
9. That the respondent had represented to the complainant that it would use the best quality of material in raising /erecting the building and none of its customer would have to face any defect in the raw material.
10. That when the respondent visited the construction site, he observed that the respondent was not following the standard code of building construction i.e., IS 456:2019. It was using the tower foundation pit as a water storage tank for construction purpose for more than 2 years and started erecting high-rise tower over a raft foundation of depth 600mm only, instead of piling-foundation. It was also using raw material of low and inferior quality while raising construction of the unit. The complainant contacted respondents marketing head through mail and over telephone. He gave the assurance that he would definitely take action.
11. That the complainant again visited the site and shocked to see that no action has been taken on his concerns and work was going on in same manner as previously, neither the building foundations strengthening was done, nor the quality of raw material improved. Thus, the complainant again



contacted to respondent marketing head Mr. Anil Ahuja through mail on 15 July 2020.

12. That even after not getting respond from respondent side the complainant continually raised his concerns through telephone and mail as dated 30 November 2020, 19 February 2021. But due to non-responding dry behaviour of respondent, helpless complainant has to raise complaint through authority.
13. That in the case of heavy rains there would be leakage or seepage in the rainy days or season because of poor-quality building material being used by the respondent in the project.
14. That poor quality of the raw /building material further leads to harm and losses not limited up-to inhabitants, project and their properties etc., and for which the respondent shall be responsible.
15. That the respondent has committed grave deficiency in services by not using the raw material as per the Indian Standard, Bureau of Indian Standard, National Building Code of India, 2016, which amounts to unfair trade practice, which is immoral as well as illegal.

C. Relief sought by the complainant:

16. The complainant has sought the following relief:

- (i) To conduct soil investigation test from IIT and IIT certification of structure design of building and to use proper handling of raw/building material in raising construction of the said unit.

- (ii) Appoint a local commission with direction to inspect the construction and building material being used by the respondent.
 - (iii) To raise the construction of the project afresh by follow the standards as framed and measured by the government/BIS/ISO/NBSC.
 - (iv) Appoint a structural engineer to check the structural stability of building being used by the respondent.
17. 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 14(3) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

18. That the present complaint is liable to be dismissed on the ground that this authority does not have the jurisdiction to entertain and adjudicate the present complaint and the same is in contravention to the Real Estate (Regulation and Development) Act, 2016 and Rules framed thereunder.
19. That the complainant had booked the unit in the project named Riddhi Siddhi, sector - 99, Gurugram vide application form dated 07.06.2018. The construction of the project had commenced much prior to the date of booking made by the complainant. The respondent had commenced the construction after obtaining environmental clearance on 20th January 2016.

20. That the respondent had constructed the tallest building in Faridabad consisting of 32 floors and is therefore, competent enough to carry out the construction of the project in accordance with building plans sanctioned by the Department of Town and Country Planning, Haryana. The respondent further engaged reputed civil engineers, structural engineers and civil contractors to carry out the construction and development works of the project. The respondent company further uses good quality and approved material for carrying out the construction and it has not breached or contravened the building codes as being alleged in the present complaint. The structural engineer has duly issued a certificate which certifies that the structure was being constructed by the respondent in accordance with the building code as applicable to carry out the construction of the project.
21. That the construction of the project had been stopped / obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, 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. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed

to the delay in completing the project within the specified time period.

E. Jurisdiction of the authority

22. 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

23. 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

24. Section 14(3) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 14(3) is reproduced as hereunder:

Section 14(3)

In case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of 5 years by the allottee from the date of handing over possession, it shall be duty of the promoter to rectify the such defects without further charge, within thirty days, and in the

event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

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.

25. 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 relief sought by the complainant.

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

- i. To conduct soil investigation test from IIT and IIT certification of structure design of building and to use proper handling of raw/building material in raising construction of the said unit.
- ii. Appoint a local commission with direction to inspect the construction and building material being used by the respondent.
- iii. To raise the construction of the project afresh by follow the standards as framed and measured by the government/BIS/ISO/NBSC.

iv. Appoint a structural engineer to check the structural stability of building being used by the respondent.

26. The complainant has alleged that the builder is using raw material of low and inferior quality while raising construction of the unit. The respondent while filing reply has stated that prior to carry out construction and development of project, it obtained all the permissions from the competent authority. Moreover, the respondent engaged reputed civil contractors to carry out the construction works of the project. The authority is of the view that the respondent-builder has obtained all the permissions from the competent authorities besides engaging reputed civil and structural engineers and civil contractors to carry out the construction works of the project. The structural engineers have duly issued a certificate to the fact that structure is being constructed in accordance with the building code as applicable to carry out the construction of the project. The structural engineer Maqsud E Nazar issued such certificate on 13.10.2021. Therefore, the builder is using good quality and approved material for carrying out the construction and didn't breach or contravened the building code. If there is anything specific which comes to the notice of the complainant, he may approach to the authority with a fresh request.

H. Directions of the authority

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

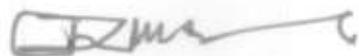
compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The structural engineers of the project have duly issued a certificate to the fact that structure is being constructed in accordance with the building code as applicable to carry out the construction of the project and attached a certificate R1 dated 13.10.2021 issued by structural engineer Maqsud E Nazar, covering the issues being raised by the complainant before the authority. If there is anything specific comes to the notice of the complainant he may approach to the authority with a fresh request.

27. Complaint stands disposed of.

28. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.03.2022