

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

Complaint no. : 998 of 2022  
First date of hearing: 15.07.2022  
Date of decision : 12.08.2022

Mrs. Anamika Jalan  
W/o Mr. Shekhar Jalan  
**R/O:** - House No. 27, Ground Floor, Block-V,  
Eros Garden, Suraj Kund, Faridabad,  
Haryana - 121009

**Complainant**

Versus

M/s Pivotal Infrastructure Private Limited  
Registered address : 309, 3rd Floor, JMD  
Pacific Square, Sector-15, Part-II,  
Gurugram, Haryana-122001  
Also at: 2nd Floor, Om Shubham Tower, Neelam  
Bata Road, NIT, Faridabad, Haryana-121001.

**Respondent**

**CORAM:**

Shri K.K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Niranjan Gaur (Advocate)  
None

**Counsel for Complainant  
Respondent**

**ORDER**

1. The present complaint dated 07.03.2022 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. N.	Particulars	Details
1.	Name and location of the project	Riddhi Siddhi , Sector-99, Gurugram
2.	Nature of the project	Affordable Group Housing Residential Colony
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 valid upto 08.08.2019
5.	Name of licensee	Pivotal Infrastructure Pvt. Ltd.
6.	RERA Registered/ not registered	Registered on 19.09.2017 valid upto 08.08.2019
7.	Unit no.	T7-0206, Tower T7
8.	Unit area admeasuring	487 sq. ft.
9.	Date of approval of building plan	17.10.2014 (annexure R-2 on page no. 15 of reply)
11.	Date of environment clearance	22.01.2016 (annexure R-3 on page no. 21 of reply)
	Date of allotment	15.09.2015

12.	Date of builder buyer agreement	30.10.2015 (page no. 26 of complaint)
14.	Due date of possession	22.01.2020 ( due date of possession is calculated from the date of environmental clearance as it is the later date)
15.	Possession clause	<b>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</b> <i>Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond 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 grant of sanction of building plans for the project or date of receipt of all environmental clearances necessary for the completion of the construction and development of the project, whichever is later.</i>
16.	Total sale consideration	Rs. 21,44,385/- [ page no. 4 of complaint]
17.	Amount paid by the complainant	Rs. 21,44,385/- ( as per payment receipts)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- I. That in May 20, 2015, Anamika Jalan (Original Allottee) relied on representation & assurances of the respondent(s) and booked an apartment bearing flat No. T/7- 0206 on 2<sup>nd</sup> floor in Tower T/7

admeasuring 487 sq. ft.(carpet area)as well as for the allotment of one two-wheeler parking site, admeasuring approximately 0.8m x 2.5m (unless the zoning plan specifies otherwise) earmarked and to be allotted with the apartment in the project Riddhi Siddhi" at sector 99, Gurugram marketed and developed by the respondent under construction link payment plan for a total sale consideration of Rs.21,44,385/- including basic sales price, parking charges, development charges, cess, levies or assessment or EDC/IDC, etc. At the time of accepting the application money, the respondent assured for the delivery of the affordable housing unit with specified specifications.

- II. That on 20.05.2015, the respondent issued a payment receipt in favour of Mrs. Anamika Jalan (Original Allottee) of Rs. 1,00,000/- as booking amount. On 15.09.2015, the respondent sent an allotment letter in favour of complainant confirming the allotment of unit no. T/7-0206 on the 2<sup>nd</sup> floor in tower – T/7, admeasuring 487 sq. ft.
- III. That on 30.10.2015, a pre-printed, unilateral, ex-facie, and arbitrary builder buyer agreement was executed inter-se the respondent and the complainant. The project was being developed under affordable group housing policy, 2013 and the same was to be implemented within 4 years from the date of grant building plans approval or environmental clearance, whichever is later.
- IV. The project was registered vide the registration no. 236 of 2017 dated 19.09.2017 with the Panchkula authority, which was valid up to

08.08.2019. The due date of completion of project as declared by the promoter at the time of registration was 19.05.2019.

- V. That the complainant made several phone calls and visited several times to the office of the respondent and requested to complete the project as per specifications and amenities as per BBA and brochure, but all went in vain. Till now, the respondent failed to offer the possession of the flat. It is pertinent to mention here that so many flats and other amenities are not yet developed/constructed in the project. It is again highly pertinent to mention here that the respondent do not have the complete OC of the project and construction activities are going on, in the complex. The complainant most humbly submits that she has not purchased four walls and a roof. She has purchased the flat with amenities and without amenities, any offer of possession is not a valid offer of possession. The main grievance of the complainant is that she has paid more than 100% of the actual cost of the flat and the respondent party has failed to deliver the possession of flat on promised time and till date, the project without amenities. The works on other amenities, like external and internal services are not yet completed. Now, it is more than six and half years from the date of booking and even the construction of the towers is not completed.
- VI. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others and is prima facie clear

on the part of the respondent which makes them liable to answer this authority.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
  1. **Direct the respondent to refund a total amount by the complainant at a prevailing rate of interest.**
5. 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**

6. The respondent has contested the complaint on the following grounds.
  - a. That the present complaint cannot be entertained and adjudicated by this authority as it does not have the jurisdiction to entertain and adjudicate the present complaint. The complaint was filed herein by the complainant is violative of the provisions of Real Estate (Regulation and Development) Act, 2016 as well as rules framed thereunder. Hence this complaint is liable to be dismissed along with imposition of costs in favour of the respondent and against the complainant.
  - b. That the respondent was granted a license bearing no. 86 of 2014 dated 09.08.2014 for the development of an affordable group housing residential colony on the land admeasuring area of 6.19375 acres situated in the revenue state of village Kherki-Marja, Dhankot, sector-99, Gurugram. The respondent thereafter, obtained all the relevant

approvals and sanctions to commence the construction of the project.

The respondent obtained the approvals of the building plans vide approvals dated 17.10.2014 and also obtained the environmental clearance vide approval dated 22.01.2016. The respondent further obtained the registration under Act and the respondent was granted the registration no. 236 of 2017. The said RERA registration was valid till 08.08.2019 which was extended by this authority till 31.08.2020.

- c. That it is clearly evident from the aforesaid approvals granted by the various authorities, that the respondent was entitled to complete and build the project till 31.08.2020. However, due to the outbreak of the pandemic covid-19 in March 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view the difficulties in completing the project by real estate developers, this authority granted 6 months extension to all the under construction projects vide order dated 26.05.2020. Thereafter due to the second covid wave from January to May 2021, once again the construction activities came to a standstill. The covid pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by this authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid lockdown.
- d. 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 NGT, Environment Pollution (Control and Prevention) Authority, 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 pace of the construction for months which also contributed in the delay in completing the project within the specified time period.

- e. That the project is an affordable group housing project governed by affordable housing policy, 2013 and the selling price of the said project was fixed by the Department of Town and Country Planning, Haryana. The respondent had diligently carried out the construction of the project and had made all efforts to complete the project within the given time period. But due to the covid-19 pandemic, there was severe shortage of labour for around 9-12 months which resulted in the pace of construction being set to naught. Although this authority had therefore granted 9 months extension but the same was clearly not enough for completing the project and therefore, the respondent is making all efforts to complete the development of the project by the end of this year 2021.
- f. That the complainant is herself guilty of not making the payment of the due instalments on time and hence, she cannot seek the timely delivery of the project as the timely payments were sine qua non for seeking the delivery of the project on time.



7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

10. 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) The promoter shall-

*(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;*

**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.*

11. 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 complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(I) RCR,357 and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication*

*under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant.**

**F.1 Direct the respondent to refund a total amount by the complainant at a prevailing rate of interest.**

14. The complainant has submitted that she booked a unit bearing no. T7-0206, tower T7 in the project namely "Riddhi Siddhi", the nature of the project is "Affordable Group Housing Residential Colony". The complainant had paid full amount of total sale consideration which is 21,44,385/-. The possession of the said unit would be hand over within a period of 4 years from the grant of sanction of building plans for the project or date of receipt of all environmental clearances necessary for the completion of the construction and development of the project, whichever is later. The date of environmental clearance being later, the due date of handing over of possession is reckoned from the date of environment clearance. Therefore, the due date of handing over of possession comes out to be 22.01.2020.
15. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein.

The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is 22.01.2020 and there is delay of 2 years 1 month 13 days on the date of filing of the complaint.

16. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which she has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021 :**

*“” .... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”*

17. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022.** it was observed that :

*“25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including*

*compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"*

18. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
19. This is without prejudice to any other remedy available to the allottee including compensation for which she may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 21,44,385/- with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F. Directions of the authority**

21. 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 authority hereby directs the promoter/respondent to return the amount received by them i.e., Rs. 21,44,385/- with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The respondent builder is directed not to create third party right against the unit before full realization of the paid up amount along with interest to the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
22. Complaint stands disposed of.
23. File be consigned to registry.

v.i-  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2022

  
(Dr. K.K. Khandelwal)  
Chairman