



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

Complaint no. : 4804 of 2022
Date of filing of complaint: 06.07.2022
Disposed of on 15.02.2023

Mr. Surinder Pal Singh Marwah
R/o: - 65 , 1ST Floor, Kalu Sarai, Hauz Khas,
New Delhi- 1100161

Complainant

Versus

M/s Pivotal Infrastructure Private Limited.
Office at: 309, 3rd floor, JMD Pacific Square,
Sector-15, Part-2, Gurugram-122001

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Surinder Pal Singh Marwah
Sh. Rohan Gupta (Advocate)

Complainant in person
Respondent

ORDER

1. This complaint 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 thereunder or to the allottees 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	"Paradise" at sector 62, village Ullahawas, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	Approx.... 5acres
4.	RERA Registered/ not registered	Registered vide no. 178 of 2017 dated 01.09.2017 valid upto 29.05.2021
5.	Unit no.	T4-1103, 11 th floor, tower no. T4 (Annexure P2, page no. 26 of complaint)
6.	Unit area admeasuring	636 sq. ft. (Carpet area) (Annexure P2, page no. 26 of complaint)
7.	Date of allotment	30.11.2016 (Annexure P2, page no. 26 of complaint)
8.	Date of builder buyer agreement	19.06.2019 (Page no. 34 of complaint)
9.	Date of building plan approval	25.07.2016 (page 17 of reply)
10.	Environmental clearance dated	28.07.2017 (page 21 of reply)
11.	Due date of possession	28.07.2021 + 6 months grace period due to covid 19 i.e. 28.01.2022 [Due date of possession calculated from the date of environmental clearance dated 28.07.2017]
12.	Total sale consideration	Rs. 27,51,960/- (demand letter dated 16.08.2022 on page 112 in reply)
13.	Amount paid by the complainant	Rs. 27,43,336/- (demand letter dated 16.08.2022 on page 112 in reply)



14.	Demand letter issued by the respondent	16.08.2022 (page 111 of reply)
15.	Occupation certificate	N/A
16.	Offer of possession	Not offered

B. Facts of the complaint

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

I. The respondent made advertisement in the newspaper & through freelance real estate agents with regard to the location, specification and amenities and time of completion of the project under the name "affordable group housing colony " commonly known as "PARADISE" floated under Haryana Government's Affordable Housing Policy, located at Sector 62, Gurgaon, Haryana. That the complainant approached to the respondent for booking of an flat vide application bearing no. 585. The draw of the said project was held, wherein the complainant was allotted flat no T4 -1103 at 11TH floor at Tower 4.

II. That the respondent to dupe the complainant in their nefarious net, even executed a one-sided builder buyer agreement signed between complainant and respondent through their authorised representative on dated 19.06.2019, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. The apartment buyers agreement was executed between the complainant and the authorised representative of



- the respondent. That the total consideration of the flat was Rs 25,84,000/- and applicable taxes payable extra; the complainant paid the amount towards the cost of flat as and when the demand were raised by the respondent.
- III. That as per clause 5.1.1 of the BBA the respondent was liable to hand over the possession of a said unit before 28.07.2021 considering the project commencement dated from the date of environment clearance dated 28.07.2017.
- IV. As per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. The development of 24 meters road that is the main access to the project site is also not ready. That as per section 19 (6) the Act, complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainant herein are not in breach of any of its terms of the agreement.
- V. That respondent has charged interest on delayed instalment @ 15 % P.A. compounded annually interest as per clause 1.23 of BBA, whereas, as per BBA the offer of delay possession penalty for the builder towards buyers is just Rs. NIL per sq. ft per month. This is totally illegal, arbitrary and unilateral.
- VI. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA with a malicious and fraudulent intention and caused deliberate and intentional



huge mental and physical harassment of the complainant and his family who has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking delayed possession charges. The builder buyer agreement consists very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature. As every clause of the agreement is drafted in a one-sided way, even a single breach of unilateral terms of builder buyer agreement by complainant, will cost him forfeiting of earnest money and about delay payment charges 15%. respondent has not prepared the builder buyer agreement as per the terms and conditions mentioned under the Haryana Affordable Policy 2013 and also the builder buyer agreement not drafted as per the RERA act 2016.

- VII. That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.
- VIII. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant in time has accrued huge losses on account of the career plans of their family



member and themselves and the future of the complainant and their family are rendered dark as the planning with which the complainant invested her hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits.

- IX. The complainant is eagerly waiting for his Flat even today and wants the Respondent to deliver the flat as early as possible without any more delay.
- X. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this authority as the apartment which is the subject matter of this complaint is situated in Sector 62, Gurugram which is within the jurisdiction of this authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to pay interest on account of delayed possession on paid amount of Rs 27,84,260/- from 28.07.2021, along with pendente lite and future interest till actual possession.
 - II. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after Getting Occupancy Certificate.
 - III. To ensure that the access to the project is ready through the 24 meters road as shown in the brochure of the project at the time of possession.



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 contested the complaint on the following grounds: -

- a) That the present complaint in the present form cannot be maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.
- b) That this hon'ble authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
- c) That the Respondent was granted a license bearing no. 05 of 2016 dated 30.05.2016 for the development of an affordable group housing residential colony on the land admeasuring area of 5.06875 Acres situated in the revenue state of village Ullahawas, Sector - 62, 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 25.07.2016 and also obtained the environmental clearance vide approval dated 28.07.2017. That the respondent further obtained the registration under RERA Act and the respondent was granted the registration no. 178 of 2017. The said RERA registration was valid till 29.11.2021 taking into



account the order dated 26.05.2020 passed by this authority granting extension of the RERA registrations for a period of six months due to lockdown measures owing to pandemic of Covid-19.

d) That 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. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.

e) 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 in the delay in completing the project within the specified time period.

- f) That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance, which is later, was incumbent upon the complainant making timely payments. The complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due installments as is evident from the demand letter and interest sheet annexed herewith as **Annexure - R8** respectively. Therefore, the complainant is forbidden to demand the timely performance of the 'contractual obligations' by the respondent, wherein the complainant, himself, had failed to perform his part of the 'contractual obligations' on time.
- g) That the present project is an affordable group housing project being developed in accordance with the provision of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the respondent was paid the allotment price in installment. Though, the allotment price was fixed by the Government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost was increased manifold but the Government of Haryana had failed to increase the allotment price. The Government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to



have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of Affordable Housing Policy, 2013. The license for the project Paradise Siddhi was granted on 30.05.2016 and the respondent was permitted to sell the units at the allotment price of Rs. 4000 per sq. ft. the project is being constructed by the respondent and is near in completion. The photographs of the current status of the project which clearly proves that the entire construction has been done and the formalities of obtaining occupation certificate remains pending.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions 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)(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 complainant at a later stage.

F. Findings on the objections raised by the respondents

F.I. Objection regarding passing of various force majeure conditions such as orders by EPCA, lockdown due to Covid-19 pandemic, shortage of labour and NGT orders.

12. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, lockdown due to outbreak of Covid-19



pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) but the due date for completion of the project comes to 28.01.2022. The authority is of considered view that circumstances such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, NGT were for shorter period of time and were not continuous and thus, no leniency in this regard can be given to the respondent/builder. However, due to spread of covid 19, the authority vide its order dated 26.05.2020 allowed a grace period of six months for completion of the projects, the due date of which fell after 23.03.2020. So taking into consideration the pandemic, a period of six months is allowed to the developer to complete the project beyond 28.07.2021 and the same comes to 28.01.2022 (though inadvertently the due date for completion of project and offer of possession has been mentioned as 28.07.2021).

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay interest on account of delayed possession on paid amount of Rs 27,84,260/- from 28.07.2021, along with pendente lite and future interest till actual possession.

GII. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after Getting Occupancy Certificate.



GIII. To ensure that the access to the project is ready through the 24 meters road as shown in the brochure of the project at the time of possession.

13. 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." सत्यमेव जयते

14. Clause 8.1 of the apartment buyer's agreement (in short, agreement) dated 19.06.2016 provides for handing over of possession and 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 authority(ies), 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 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, 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.."

15. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of



grant of environment clearance, whichever is later. As per clause 8.1 of apartment buyer's agreement the possession of the allotted unit is to be handed over within four years from date of sanction of building plan i.e.; 28.07.2016 or within four years from the date of environment clearance i.e.; 28.07.2017, whichever is later. The due date of possession is calculated from the date of environment clearance i.e.; 27.07.2017, being later which comes out to be 28.01.2022 (by adding a period of six months due to covid 19).

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

17. 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.

18. 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., 15.02.2023 is **8.60%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%**.
19. 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;"*
20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.60%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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. By virtue of clause 8.1 of the apartment buyer's agreement executed between the parties on 19.06.2019, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plan or from the date of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e.; 28.07.2017, being later which comes out to be 28.01.2022 by adding a period of six months allowed by the authority due to covid 19.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.60% p.a. w.e.f. 28.01.2022 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate, so it can be said that the complainant shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2



months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 28.01.2022 till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier.

24. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 19.06.2019 to hand over the possession within the stipulated period. Accordingly, the 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 the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 28.07.2021 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.60 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

25. 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 to the complainant against the paid-up amount at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e., 28.01.2022 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 28.01.2022 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;
- 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., 10.60% 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 the part of the agreement to sell.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.02.2023



HARERA
GURUGRAM