



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

Complaint no. : 4864 of 2022
Date of filing of complaint: 13.07.2022
Disposed of on 15.02.2023

Ravi Kaushik
R/o: - House No. 72, Street no. 4,
Shakti Nagar Part-2, Haryan-123401

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. Dhruv Lamba (Advocate)
Sh. Rohan Gupta (Advocate)

Complainant
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	"Ridhi Sidhi" at sector 99, Gurgaon, Haryana
2	Nature of the project	Affordable Group housing
3	Project area	6.19375 acres
4	DTCP license no.	86 of 2014 dated 09.08.2014 valid upto 08.08.2019
5	RERA Registered/ not registered	Registered vide no. 236 of 2017 dated 19.09.2017 valid upto 08.08.2019
6	Registration extension vide no.	Harera/GGM/REP/RC/236/2017/EXT/177/2019 Dated 30.12.2019 Valid upto 31.08.2020
7	Unit no.	T5-0208, 2 nd floor, Tower-T5 (page no. 16 of complaint)
8	Unit area admeasuring	487 sq. ft. (Carpet area) (page no. 16 of complaint)
9	Date of allotment	05.09.2015 (page no. 16 of complaint)
10	Date of builder buyer agreement	24.09.2016 (Page no. 24 of complaint)
11	Date of building plan approval	17.10.2014 (page 14 of reply)
12	Environmental clearance dated	22.01.2016 (page 20 of reply)
13	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016]



14	Total sale consideration	Rs. 19,98,000/- (clause 4.1 of BBA, page 27 of complaint)
15	Amount paid by the complainant	Rs. 19,94,661/- (Page 15 of complaint)
16	Occupation certificate	N/A
17	Offer of possession	Not offered
18	Demand letter	13.08.2022 (page 111 of reply)

B. Facts of the complaint

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

- I. That on 05.11.2014, the complainant/allottee made an application bearing no. 2373 for the allotment of a residential apartment in the project "Riddhi Siddhi", located in the revenue estate of Village of Kherki Majra, Dhankot, Sector-99, Tehsil and District Gurugram, Haryana being developed by the respondent under the "Affordable Housing Policy 2013", issued by the Government of Haryana. An amount of Rs. 1,00,000/- was paid to the respondent company at the time of application itself.
- II. That the respondent vide letter dated 05.09.2015, allotted an apartment bearing no. 0208 on 02nd floor, Tower-T5, admeasuring 487 sq. ft. to the complainant in the subject project. The total sale price for the subject apartment as agreed upon between both the parties was Rs. 19,98,000/- excluding applicable taxes, EDC/ IDC etc.
- III. That on 24.09.2016, an apartment buyer's agreement was executed between the complainant and respondent. That as per clause 8.1 of the ABA, the respondent proposed to complete the



construction and to handover the possession of the subject apartment within a period of 4 years from the date of grant of sanction of building plans 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.

- IV. That the total cost of the said apartment is Rs. 19,98,000/- excluding applicable taxes, EDC/ IDC etc. as per ABA executed inter se both the parties and out of that a sum of Rs. 19,94,661/- is paid by the complainant in time bound manner as and when demanded by the respondent company.
- V. That it is a matter of fact, the date of sanction of building plans for the subject project is 17.10.2014 and the date of receipt of the environmental clearance is 22.01.2016. On bare perusal of the cause 8.1 of the ABA, it becomes apparently clear that the due date of possession should be calculated from the date of receipt of the environmental clearance i.e., 22.01.2016 and due date of possession out to be 22.01.2020.
- VI. That further it would be pertinent to mention over here that the construction of the said project is yet not complete and possession of the subject apartment has not been offered to the complainant till date in spite of making a payment of Rs. 19,94,661/-, which is more than 95% of the total sale consideration of the subject apartment.



VII. That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent which is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant's who has spent his entire hard-earned savings in order to buy this subject apartment and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and the lack of commitment in completing the subject project on time, has caused the complainant great financial and emotional loss.

VIII. That furthermore the complainant does not want to withdraw from the project and intends to continue with the project. It is a matter of fact that the respondent was liable to hand over the possession of a subject apartment on or before the due date of possession as per the clause 8.1 of the ABA which comes out to be 22.01.2020. So, the respondent is liable to pay the delay possession charges from the due date of possession i.e., 22.01.2020 till actual handing over of possession at the prescribed rate of interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- I. Direct the respondent to handover the possession of the subject apartment after taking requisite approval from the competent authorities with delayed possession charges at the prescribed rate



of interest from the subject apartment i.e. 22.01.2020, till the date of actual delivery of the subject apartment.

II. Direct the respondent not to charge for anything or any amount which are not the part of the ABA.

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 complaint in the present form is not 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 same 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. 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 RERA Act was granted the registration no. 236 of 2017, valid till 08.08.2019 which was extended by this authority till 31.08.2020.

d) 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, the 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 its control.

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 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 he 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 and 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 Riddhi Siddhi was granted on 11.08.2014 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 22.01.2020. The respondent-builder has already applied for getting occupation certificate vide application dated 04.08.2021 and the same is pending before the competent authority. 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. The respondent-builder stated at bar that it has already applied for grant of occupation certificate vide application dated 04.08.2021 and there is delay on part of competent authority. Further, an application in this regard is also pending. The authority is of considered view that no occupation certificate has been obtained by the respondent till date and if such delay is on the part of any competent authority then, it may approach the competent/deciding authority for getting this time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for delay in handing over possession as per provisions of the Act.



13. As far as delay in construction due to outbreak of Covid-19 is concerned, ***Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that-***

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

14. The respondent was liable to complete the construction of the project and handover the possession of the said unit was to be handed over the possession of the allotted unit by 22.01.2020 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to handover the possession of the subject apartment after taking requisite approval from the competent authorities with delayed possession charges at the prescribed rate of



interest from the subject apartment i.e. 22.01.2020, till the date of actual delivery of the subject apartment.

G. II Direct the respondent not to charge for anything or any amount which are not the part of the ABA.

15. 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."

16. Clause 8.1 of the apartment buyer's agreement (in short, agreement) dated 24.09.2016 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.."

17. 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.; 17.10.2014 or within four years from the date of environment clearance i.e.; 22.01.2016, whichever is later. The due date of possession is calculated from the date of environment clearance i.e.; 22.01.2016, being later which comes out to be 22.01.2020.

18. During hearing, the counsel for the complainant stated that they are seeking DPC since the due date was 22.01.2020 and the complainant had paid almost the entire amount and no OC has been received of the project till now. However the counsel for the respondent states that OC has been applied in December, 2022 and expect to get the OC by June 2023. Complainant is seeking DPC, undoubtedly almost 3 years have passed since the due date has been lapsed. Delayed possession charges is allowed after adjustment of interest on delayed payment by the allottee at the equivalent prescribed rate i.e. 10.60% per annum and respondent to issue a revised account statement to allottee. Further, RERA registration of said project has also expired on 31.08.2020 and planning department of the authority is directed to start the suo moto proceedings under section 4 (2) (L) (c) of the Act.
19. **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.

20. 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.
21. 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%**.
22. The definition of term 'interest' as defined under section 2(z) 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;”*

23. 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.

24. 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 24.09.2016, 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.; 22.01.2016, being later; which comes out to be 22.01.2020.

25. 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. 22.01.2020 till the handing over of possession or offer of possession plus two months, whichever is earlier; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

26. 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. 22.01.2020 till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier.

27. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 24.09.2016 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., 22.01.2020 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

28. 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., 22.01. 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 arrears of such interest accrued from 22.01.2020 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.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- 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 sale.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.02.2023