

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

Complaint no.: 1801 of 2022
First Date of Hearing: 06.09.2022
Order reserved on: 11.07.2023
Order Pronounced on: 28.09.2023

Smt. Rubi Jain
RR/o: - 36 UB, Ground Floor, Jawahar Nagar, Delhi-
110007

Complainant

Versus

M/s Pivotal Infrastructure Private Limited.
Regd. Office at: 704-705, 7th Floor, JMD Pacific Square,
Sector 15, Part II, Gurgaon-122001
Corporate Office at: - 2nd Floor, Om Shubham Tower,
Neelam Bata Road, NIT Faridabad-121001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Rishab Jain (Advocate)
Sh. Rohan Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 09.05.2022 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 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	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.	T2-0703, 7 th floor, Tower-T2 (As per page no. 63 of the complaint)
8.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 63 of the complaint)
9.	Date of allotment	31.12.2018 (As per page no. 63 of the complaint)
10.	Date of agreement for sale	24.01.2019 (As per page no. 68 of the complaint)
11.	Date of building plan	17.10.2014

	approval	(As per page no. 15 of the reply)
12.	Environmental clearance dated	22.01.2016 (As per page no. 21 of the reply)
13.	Possession clause	<p>5.1. HANDING OVER OF POSSESSION</p> <p><i>5.1.1 Subject to Clause 12 herein or any other circumstances not anticipated and beyond the control of the developer or any restraints/restrictions from any courts/Authorities but subject to the purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this agreement including but not limited to timely payment of the total price and having complied with all provisions, formalities, documentations, etc., as prescribed by the developer, the developer proposes to offer the handing over the physical possession of the flat to the purchaser(s) within a period of forty-eight(48) months from the commencement date.</i></p>
14.	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016]
15.	Total sale consideration	Rs. 19,98,000/- (As per page no. 80 of the complaint)
16.	Amount paid by the complainant	Rs. 21,57,840/- (As per page no. 32 of the complaint)
17.	Occupation certificate	N/A
18.	Offer of possession	Not offered

19.	Demand letter	13.08.2022
20.	Tripartite Agreement	12.03.2019

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. The respondent published very attractive brochure of Affordable Group Housing Colony called '**Riddhi Siddhi**' at village Kherki Majra Dhankot, Sector - 99, Gurugram, Haryana. The project was launched in 2014 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.
- II. The complainant made an application for allotment of a residential apartment in the project via application no. 3006 and paid Rs.2,15,784/- via two cheques, no.653132 amounting Rs.1,07,892/- and no.653133 amounting Rs.1,07,892/- both dated 27.12.2018, as registration amount to the respondent.
- III. The respondent issued allotment letter dated 31.12.2018 to the complainant for allotment of apartment bearing No. T2-0703, 7th Floor, Tower T2 having carpet area of 487 sq. ft. with one two-wheeler parking site in the project.
- IV. The agreement for sale was executed between the parties on 24.12.2019 for the allotted apartment. The total sale consideration for the allotted apartment is Rs.19,98,000/- exclusive of taxes as per agreement.
- V. The respondent issued a letter dated 12.03.2019 to the Branch Manager of PNB Housing Finance Limited mentioning that the allotted apartment is clear, marketable and free from all encumbrances. A Tripartite Agreement was executed between the

complainant, the respondent and Punjab National Bank on 12.03.2019 for obtaining a housing loan amounting Rs.10,00,000/- towards payment of total sale consideration.

- VI. The complainant further paid Rs.19,42,056/- and the respondent issued receipt no. R009019 dated 27.03.2019 to the respondent.
- VII. The date of possession of the apartment as per clause 5.1.1, Page - 15 of the agreement for sale, is to be calculated as 48 months from the commencement date. The respondent provides for the definition of 'commencement date' in clause 1.10 of the agreement which is reproduced as under:

"Commencement date shall mean the later of the date of approval of building plans or the date of obtaining the environment clearance for the AGH Colony which is later."

The Authority in its order dated 08.03.2022 of **Complaint No. 5029 of 2020** titled as **Trilok Chand versus Pivotal Infrastructure Private Limited & Another**, has mentioned that approval of building plan of the project 'Riddhi Siddhi' was given on 17.10.2014 and the environment clearance was granted to the respondent on 22.01.2016. Therefore, the due date is calculated 48 months from the date of environment clearance i.e., 22.01.2016 which comes out to be 22.01.2020.

- VIII. The complainant in total paid a sum of Rs.21,57,840/- as and when demanded by the respondent till 27.03.2017. Despite receiving 100% payable amount of the apartment from the complainant, the respondent has failed to timely handover the possession of the apartment to the complainant till date, even after a delay of around 2 years and 3 months.

- IX. The complainant had approached the respondent and pleaded for delivery of possession of her apartment as per the agreement on various occasions, but no information was provided.
- X. That the respondent is responsible and accountable to the terms and conditions prescribed in the agreement for sale. The respondent is bound to pay the interest on the deposited amount to the complainant if there is a delay in handing over the possession of the apartment.
- XI. That the respondent has, in an unfair manner, siphoned off funds meant for the project and utilised same for its own benefit for no cost. The respondent being builder, promoter, colonizer and developer, whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However in the present scenario, the respondent has utilised funds collected from the complainant and other buyers for its own good in other projects, being developed by the respondent.
- XII. That the complainant has lost confidence and in fact has got no trust left in the respondent, as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainant besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the apartment in time and then remaining non-responsive to the requisitions of the complainant.
- XIII. That the complainant does not intend to withdraw from the project. As per the obligations on the respondent/promoter under Section 18 of the Act, 2016 read with Rules 15 and 16 of the Rules, 2017, the promoter has to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. The



respondent has neglected its part of obligations by failing to offer a legitimate and rightful possession of the apartment on time.

XIV. The complainant being aggrieved person has filed a complaint under Section 31 of the Act, 2016 read with Rule 28 of the Rules, 2017 at HRERA, Gurugram for violation or contravention of provisions of the Act and Rules as mentioned therein.

C. Relief sought by the complainants:

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

- I. Direct the respondent to handover the legal and rightful possession of the apartment.
 - II. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
 - III. Direct the respondent to provide a fixed date of delivery.
 - IV. Direct the respondent not to charge anything which is not mentioned in the agreement for sale.
 - V. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant.
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: -
- i. That at the very outset, it is most respectfully submitted that the complaint filed by the complainant is not maintainable and this authority has no jurisdiction whatsoever to entertain the present complaint due to lack of cause of action.

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- ii. 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 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.
- iii. 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 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 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.

- iv. 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.
- v. 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. 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.
- vi. That the complainant had booked the unit in December 2018 and was issued the allotment letter on 31.12.2018. The complainant had



visited the project site before booking the unit in the project. Therefore, he was fully aware of the fact that the construction of the project was delayed. The complainant agreed to book the unit in the project knowing fully well that the construction of the project has been delayed and the same could not be delivered in January 2020 but still the complainant went ahead with the allotment and chose to seek the allotment of the unit. The complainant being a purchaser cannot now agitate that the construction of the project has been delayed as the complainant ought to have made reasonable enquiries and diligence prior to making the booking of the unit. Hence, the present complaint is nothing else but a malicious attempt to recover interest from the respondent.

- vii. 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 in the year 2013 but the same was not revised till date. Although the construction cost was increased manifold but the Government had failed to increase the allotment price. The Government 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 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.

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 submission made by the parties.

E. Jurisdiction of the authority

The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction 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

8. 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

9. 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.

10. 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.

F. Findings on the objections raised by the respondent.

F.1 Objection regarding delay due to force majeure circumstances

11. 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 Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, 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). Further, 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 48 months from the commencement date and as per clause 1.10 of the agreement for sale, 'commencement date' means "the later of the date of approval of building plans or the date of grant of environment clearance for the AGH colony, which is later." In the present case, the date of approval of building plan is 17.10.2014 and date of environment clearance is

22.01.2016 as taken from the documents on record. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 22.01.2020, which is prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainant:

G. I Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

12. In the present complaint, the complainant intend 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."

(Emphasis supplied)

13. The date of possession of the apartment as per clause 5.1.1 of the agreement for sale, is to be calculated as 48 months from the commencement date. Therefore, the due date is calculated 48 months from the date of environment clearance i.e., 22.01.2016 which comes out to be 22.01.2020, as per the agreement for sale and order of the Authority dated 08.03.2022 in complaint no. 5029 of 2020 of the same project.

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14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate 18% p.a. 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.

15. 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.
16. 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., 28.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
17. 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
19. On consideration of the documents available on record and submissions made by both the parties 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. The due date of handing over possession is 22.01.2020. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months



or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainant as cost of present litigation.

20. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. 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 respondent is directed to pay interest on the paid-up amount by the complainant at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy

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- certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
- 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 allottee 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 respondent shall not charge anything from the complainant which is not the part of the agreement for sale
 - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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.
22. Complaint stands disposed of.
23. File be consigned to registry.

V.I-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.09.2023