



**HARERA**  
**GURUGRAM**

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint no. : 1953 of 2022**  
**Date of decision : 22.08.2023**

Smt. Rajwati W/o Rakesh Kumar  
Address: C-2930 A, Sushant Lok, Phase 1, Gurugram

**Complainant**

**Versus**

M/s Pivotal Infrastructure Pvt. Ltd.  
Address: Plot no. 12, Sector 4, Faridabad

**Respondent**

**APPEARANCE:**

For Complainant:

Mr. V.K Bansal Advocate

For Respondent:

Mr. Rohan Gupta Advocate

**ORDER**

1. This complaint has been filed by Smt. Rajwati under section 31 read with section 72 of The Real Estate (Regulation and Development) Act 2016, against respondent viz. M/s Pivotal Infrastructure Pvt. Ltd.
2. According to complainant, the respondent launched and advertised about one of its affordable housing projects in the name and style of 'Ridhi Siddhi', consisting few commercial spaces / shops at '99 Marina Bay', situated at Kherki Majra, Dhankot, Sector-99, Gurgaon, Haryana.
3. On 01.05.2015, she(complainant) applied for allotment of a commercial unit/shop in the said project and paid an advance amount of Rs. 6,71,769.0 at the time of booking. An agreement was signed between the parties on 01.05.2015. She was allotted shop no.2 admeasuring 217 sq. ft. for basic sale consideration of Rs.18,95,495/-. She(complainant)

opted Flexi Payment Plan for the payment of consideration amount and has duly paid entire sale consideration. It was committed by the respondent that the said shop will be developed within 36 months from the date of signing of Builder Buyer Agreement, but the same has not been completed. The respondent was obliged to pay an amount of 22,875/- per month to the complainant as an amount of monthly assured return in terms of Clause 5.A of the BBA.

4. That vide letter dated 19.04.2017, respondent intimated her (complainant) that the super area of the allotted shop is increased from 217 sq. ft. to 239 sq. ft and accordingly, the amount of monthly assured return is also increased from Rs.22,875/- to Rs.23,433/-. The respondent has failed to pay the assured returns from March, 2021 onwards, due to the reasons best known to it (respondent), which proves that the respondent has adopted unfair trade practice for promoting the sale and has deceived many buyers including her (complainant) who invested their money on the assurances and promises of the respondent. The latter has breached the terms & conditions of the BBA. She (complainant) through e mails, asked and requested the respondent many times to pay outstanding monthly assured returns, but to of no use.
5. That outbreak of COVID-19 muddled the entire nation and financially overburdened many people specially the common man who was somehow managing his family. All this effected her (complainant) also, but she chose to fight and overcame the financial crisis and accordingly requested the respondent for the payment of outstanding monthly returns, but respondent has not paid the outstanding returns till date.
6. That the construction of the shop was ought to be completed till 01.11.2018, but the same has not been completed yet, which proves that the respondent has siphoned off the hard-earned money of the complainant which was invested by her on the assurances and commitments of the respondent. The respondent has been gaining illegal benefits from the complainant's money on the false pretext of providing lucrative returns.
7. Citing facts as described above, the complainant has sought following reliefs :

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- a. to compensate her with Rs.2,34,330/- for outstanding assured return from March 2021 till May 2022 and the same will increase on the non payment of subsequently monthly return in terms of clause 5.A of BBA.
- b. to compensate with Rs.24,604/- i.e. interest on the outstanding payment of monthly returns as on 22.04.2022.
- c. to compensate with Rs.2,00,000 as harassment for pain and mental agony.
- d. to compensate with Rs.50,000 as litigation charges.

The respondent contested the complaint by filing a written reply. It is averred by the respondent: -

8. That it(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 Majra, Dhankot, Sector-99, Gurugram. It(respondent) obtained approvals of the building plans vide approval dated 17/10/2014, environmental clearance vide approval dated 22/01/2016. It(respondent) was granted the registration no. 236 of 2017 which was valid till 08/08/2019 and was extended by the Hon'ble Authority till 31/08/2020.
9. That it(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,



Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter due to the second wave of covid from January 2021 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 which was granted by this Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid lockdown. Construction of project had been obstructed due to the stoppage of construction activities several times during this period, 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. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent in a financial crunch, which was beyond the control of it(respondent).

10. That in April 2017, the area of the said shop was increased from 217 Sq. ft. to 239 Sq.ft. and an additional amount of Rs.1,92,170/- was demanded towards the increased area of the said shop allotted to the complainant but she failed to make said payment and started taking the enhanced monthly flexi payment benefit of Rs.558/- from 01.08.2019 to 31.03.2021. But, upon reconciliation of accounts, it was found that the respondent erroneously paid the enhanced monthly flexi payment benefit of Rs.558/- presuming that the complainant had paid the

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additional amount of Rs.1,92,170/- towards the increased area of the said shop allotted to the complainant, which actually was not. Therefore, respondent is entitled to recover the enhanced monthly flexi payment benefit of Rs.558/- paid from 01.08.2019 to 31.03.2021 along with interest, total amounting to Rs.14,935/- (including interest). All this amount is to be recovered from the complainant or is liable to be adjusted against principle amount.

11. That complainant is a defaulter and has defaulted in payment of VAT amount of Rs. 94,759/- which was to be paid on 10.02.2020 to the respondent and the same was intimated to the complainant vide Letter dated 20.01.2020. Hence, the complainants are barred from seeking timely delivery of the physical possession of the allotted shop, as per terms of the shop buyer's agreement.
12. That due to the financial crunch being faced by it(respondent), same offered the complainant to take refund of the principle amount but the complainant refused to accept the same. It is still ready and willing to refund the principle amount paid by the complainant against the allotted shop.
13. That it(respondent) has complied with the terms of the agreement dated 01.05.2015 till 31.03.2021 and made the payment of Rs. 11,438/- per month for the period 01.05.2015 to 31.04.2016 and Rs.17,157/- per month for the period 01.05.2016 to 31.04.2017 and Rs.22,875/- per month for the period 01.05.2017 to 31.07.2019 and Rs.23,433/- per month (including the excess amount of Rs.558/-) for the period

01.08.2019 to 31.03.2021 to the Complainant. Although the banks and other financial institutions were granted moratorium but the respondent made the aforesaid payment during the covid pandemic. Therefore, it (respondent) is fully entitled to claim adjustment of the moratorium period as allowed by the banks / financial institutions to their respective lenders / borrowers.

14. Stating above mentioned reasons, respondent requested for dismissal of complaint.

I heard learned counsels representing both of the parties and went through record on file.

15. Even if the facts that, respondent/ builder has been allowed to complete the construction by the Authority till 31.08.2020 or the Authority granted six months more extension to all the builders including respondent vide it's order dated 26.05.2020 as claimed by respondent are taken as true, according to complainant, the construction of her shop was to ought to be completed by respondent/builder till 01.11.2018. This fact is not disputed on behalf of respondent. Covid 19 broke up and Government of India was constrained to impose lockdown from March 2020 i.e. years after the agreed date of completion of project. The respondent cannot take shelter under said plea of Covid 19. Even if the Authority extended time to complete the project, but all this cannot deprive a buyer from his/her right granted by agreement (BBA), entered between the parties.

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16. Although it is not proved on the file that complainant defaulted in making payment of outstanding dues, even if it was true, the respondent was at liberty to impose penalty upon the defaulting buyer as per BBA. Same could raise demand in this regard. Simply to say that complainant defaulted in making the payment, is no reason to extend the date of delivery of physical possession of allotted shop.
17. When it is proved on file that respondent/builder failed to complete the construction of the shop/project in agreed time, the buyer/complainant is entitled for compensation and also the assured return as was agreed between the parties.
18. It is not denied that, the respondent is liable to pay assured return from March 2021 as claimed by the complainant. The prayer of the complainant to pay amount of assured return from March 2021 till May 2022 and for subsequent period as per clause 5.A is thus allowed. Respondent is directed to pay the same along with interest @ 10.50% p.a. in accordance with provision of Rule 16 of Haryana Real Estate Regulation and Development Rules 2017.
19. When respondent failed to handover physical possession of subject shop to the complainant in agreed time, same apparently caused mental harassment and agony to the buyer i.e. complainant. Complainant is stated to have paid entire sale consideration. Undoubtedly the builder/respondent used said money and hence received gain. Keeping in view the facts and circumstances of the case, the respondent/builder is directed to compensate the complainant/buyer by paying Rs.1,00,000/- for harassment and mental agony. The complainant has prayed for compensation of Rs.2,00,000/- in this regard which appears excessive.

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20. The complainant has prayed for Rs.50,000/- as litigation charges. No receipt of payment of legal fees has been shown by the complainant, even then, it is apparent that the complainant was represented by a lawyer in this case, same is allowed a sum of Rs.25,000/- as litigation expenses.
21. Complaint is thus allowed.
22. File be consigned to the record room.

  
**(Rajender Kumar)**  
**Adjudicating Officer,**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**