

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

Complaint no.: 2043 of 2023
First Date of Hearing: 28.09.2023
Date of Decision: 21.12.2023

Sh. Rajiv Bhandari
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 17.05.2023 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.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 up to 31.08.2020
7.	Unit no.	T3-0202, 2 nd floor, Tower-T3 (As per page no. 26 of the complaint)
8.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 26 of the complaint)
9.	Date of booking	20.04.2015 (As per page no. 20 of the complaint)
10.	Date of apartment buyer's agreement	11.01.2016 (As per page no. 23 of the complaint)
11.	Date of building plan approval	17.10.2014 (As per page no. 18 of the reply)
12.	Environmental clearance dated	22.01.2016 (As per page no. 24 of the reply)
13.	Possession clause	8.1. EXPECTED TIME FOR HANDING OVER POSSESSION 8.1.1 Except where any delay is caused on account of reasons expressly provided for

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		<p><i>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. (As per page no. 33 of the complaint)</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. 26 of the complaint)
16.	Amount paid by the complainant	Rs.21,47,930/- (As per receipt information on page no. 20 and 54-65 of the complaint)
17.	Occupation certificate	Applied on 22.12.2022 but not yet obtained (As per page no. 43 of the reply)
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

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- I. That in year 2015, the complainant got information about an advertisement in a local newspaper about the affordable housing project "RIDDHI SIDDHI" at Sector 99, Gurugram, Haryana. When they called on the phone number provided in the newspaper, the marketing staff of the respondent showed a rosy picture of the project and allure with proposed specifications and invited for site visit. That the complainant visited the project site and met with the local staff of the respondent. Local staff of the respondent gave an application form and assured that possession would be delivered within 36 months as they were told that it is a govt. project having a fixed payment instalment every 6 months and on the last instalment, the possession will be delivered.
- II. That the complainant applied for a 2 BHK residential unit in upcoming project of respondent namely " RIDDHI SIDDHI " at Sector 99, Gurugram, Haryana, for which the complainant had remitted **Rs.1,00,000/-** towards booking the unit, along with application form and the same was acknowledged by the respondent on 22.04.2015.
- III. That the respondent allotted unit/ Flat no. T3-0202, 2nd floor admeasuring 487 sq. ft. and 100 Sq. ft. balcony as well as allotment of 1 two-wheeler parking site admeasuring approximately 0.8m x 2.5m in the project. The apartment / flat was purchased under the time link payment plan as per the mandate under Affordable Housing Policy 2013 for sale consideration of Rs.19,98,000/-.
- IV. That on date 11.01.2016, a pre-printed one-sided, arbitrary and unilateral flat buyer's agreement for allotted unit was executed between the respondent and the complainant. That as per buyer's agreement, the respondent had to complete the construction of the unit and handover the possession within 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, whichever is later. The building plan of the project was approved on 17.10.2014 and environmental clearance was granted on 22.01.2016. Therefore, the due date of possession becomes on or before 22.01.2020.

- V. That till date complainant had paid Rs.21,47,930/- against the total consideration of Rs.19,98,000/-, but when complainant observed that there is no progress in construction of subject unit for a long time, he raised their grievance to the respondent.
- VI. That the complainant has always paid the instalment(s) on time and the last instalment was paid on 04.09.2019. That there is a slow progress in the construction of the unit and it is expected to take around 1-2 years more for the completion of the project.
- VII. That the main grievance of the complainant in the present complaint is that in spite of the complainant having paid more than 100 % of the actual amount of unit, the respondent has failed to deliver the possession of unit which was a core promise of the Affordable Housing Policy, 2013.
- VIII. That the complainant had purchased the unit with the intention that after purchase, his family would use the flat for their personal use. That it was promised by the respondent at the time of receiving payment for the flat that the possession of fully constructed flat as shown in newspaper at the time of sale, would be handed over to the complainant on and after the payment of last and final instalment, it is pertinent to mention here that these instalment becomes accrue on every 6 months after the commencement of construction work, and the respondent was under obligation to deliver the project complete in all respect as and when the respondent takes the last instalment or by



maximum till 22.01.2020.

- IX. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and compensate the complainant .
- X. That due to above acts of the respondent and of the terms and conditions of the flat buyer's agreement and of Affordable Housing Policy 2013, the complainant have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XI. That for the first time cause of action for the present complaint arose on **22.04.2015** when the complainant applied in the project by paying the booking amount of Rs.1,00,000/- and further on **11.01.2016** when a one sided, arbitrary and unilateral flat buyer's agreement was executed between the parties and on **04.09.2019** when the complainant paid the last instalment. Further, the cause of action arose on **22.01.2020** when the respondent failed to hand over the possession of the unit as per the buyer's agreement. The cause of action again arose on various occasions, till date, when protests were lodged with the respondent about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as the Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

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

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- 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 prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- 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.
 - 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.

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- 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 the 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.

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- 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 April 2015 and the paid the booking amount of Rs.1,00,000/- on 22.04.2015. 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

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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:

8. 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

9. 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

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

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(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 complainant at a later stage.

F. Findings on the objections raised by the respondent.

F.I 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 National Green Tribunal (hereinafter, referred as NGT), lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. 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 4 years from the date of approval of building plans or date of environmental clearance, whichever is later. In the present case, the date of approval of building plan is 17.10.2014 and date of environmental clearance is 22.01.2016 as taken from the documents on record. The due date is calculated from the date of environmental clearance being later, so, the due date of subject unit comes out to be 22.01.2020. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The authority put reliance judgment of 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 which 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."

12. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 22.01.2020 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. 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 handover the possession and pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

13. The relief(s) sought by the complainant are taken together being interconnected.
14. 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)

15. The date of possession of the apartment as per clause 8.1.1 of the apartment buyer's agreement, is to be calculated as 4 years from the date of environment clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020.
16. **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 subsection (4) and subsection (7) of section 19]

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(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., 21.12.2023 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
19. 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;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter

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which is the same as is being granted to the complainant in case of delayed possession charges.

21. 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. Though the due date of handing over possession is 22.01.2020 but the occupation certificate of the unit is yet to be obtained by the respondent. 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., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority:

22. 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 10.85% 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 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, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.
 - 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., 10.85% 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.
23. Complaint stands disposed of.
24. File be consigned to registry.

HARERA
GURUGRAM

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2023