

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

Complaint no. : 313 of 2023
Date of filing of
complaint: 10.02.2023
Date of decision : 27.10.2023

Suhail Goyal R/O: - R-11, Raj Nagar, Kavi Nagar, Ghaziabad, Uttar Pradesh- 201002	Complainant
Versus	
Pivotal Infrastructure Pvt. Ltd., Plot no. 12, Sector -4, Faridabad, Haryana	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Mr. Abhimanyu Rao Proxy Counsel	Advocate for the complainant
Mr. Siddharth Sejwal(AR)	A.R. of the respondent

ORDER

1. The present 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1	Name and location of the project	"Paradise" at sector 62, Gurgaon, Haryana
2	Nature of the project	Affordable Group housing
3	Project area	5.07 acres
4	DTCP license no.	05 of 2016 dated 30.05.2016 valid upto 29.05.2021
5	RERA Registered/ not registered	Registered vide RC no. 178 of 2017 dated 01.09.2017 valid upto 29.01.2021
6	Unit no.	903, 9 th floor, Tower-T6 (page 27 of complaint)
7	Unit area admeasuring	303 sq. ft. (Carpet area) (page 27 of complaint)
8	Date of allotment	30.11.2016 (page 18 of complaint)
9.	Date of builder buyer agreement	06.03.2017 (Page 26 of complaint)
10	Date of building plan approval	25.07.2016
11	Environmental clearance dated	28.07.2017 (page 17 of reply)

12	Possession Clause	<p>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</p> <p><i>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 endeavor 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.</i></p>
13	Due date of possession	<p>28.01.2022</p> <p>28.07.2021 + 6 months of grace period of COVID</p> <p>[Due date of possession calculated from the date of environmental clearance dated 28.07.2017 being later]</p>

		(Inadvertently the grace period of 6 month has not been added in the above mentioned due date)
14	Total sale consideration	Rs.12,41,000/- (exclusive of taxes) (page 26 of complaint)
15	Amount paid by the complainant	Rs. 13,19,602/- (Page 12 of complaint - with taxes) Rs.12,56,512.50/- (as per demand letter dated 20.04.2023 on page 40 of reply - without taxes)
16	Occupation certificate	Not yet obtained
17	Offer of possession	Not offered

B. Facts of the complaint

3. That the project in question is known as "PIVOTAL PARADISE" at Sector 62, Gurugram, Haryana which is a project under Affordable Housing Policy 2013, issued by Government of Haryana. That the apartment in question is a 1BHK flat no. T-6-903, 9th floor in tower/building no. T6 has a carpet area of 302.99 Sq. ft.
4. That in year 2016, complainant got information about an advertisement in a local newspaper about the affordable housing project "PIVOTAL PARADISE" at Sector 62, Gurugram, Haryana. That the complainant visited the project site and met with local staff of respondent. Local staff of respondent gave an application form and assured that possession will be delivered within 4

- years. That on 09.09.2016, he applied in the project and further paid Rs.62,050/- as a booking amount at the time of submission of application.
5. That on 30.11.2016, respondent issued an allotment letter against the allotted apartment and the same was purchased under the time link payment plan as per the mandate under Affordable Housing Policy 2013 for sale consideration of Rs.12,41,100/-.
 6. That on date 06.03.2017, a pre-printed one-sided, arbitrary and unilateral flat buyer agreement for allotted apartment was executed between the parties. That as per Clause 8.1, the respondent had to complete the construction of Flat and handover the possession within 4 years from date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances whichever is later. It is pertinent to mention here that The environmental clearance was granted on 28.07.2017. Therefore, the due date of possession becomes on or before 28.07.2021.
 7. That Till date he had paid Rs. 13,19,602/-. That the complainant has tried his best to pay the instalment(s) on time and the last instalment was paid on 08.05.2019. That the main grievance of him in the present complaint is that in spite of the complainant having paid 80% of the actual amounts of flat, the respondent has failed to deliver the possession of flat which was a core promise of the Affordable Housing Policy, 2013.
 8. That he had purchased the flat with intention that after purchase, his family will use the flat for their personal use. That it was promised by the

respondent party 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. 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 him.

9. Hence, the respondent has failed to adhere to the guidelines mentioned in Affordable Housing Policy, 2013 mentioned from Page 23 of BBA. That for the first time cause of action for the present complaint arose on 09.09.2016 when he paid Rs.62,050/- as a booking amount in the project and further on various occasions, till date, when the protests were lodged with the respondent party about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

C. Relief Sought

10. This Authority may direct the respondent as follows:

1. Direct the respondent to pay interest @ prescribed rate on delayed possession since due date of possession i.e 28.07.2021 till date of actual legal possession.
2. Pass an appropriate award directing respondent to complete and seek necessary governmental clearances before handing over the legal

physical possession of the residential units, at the earliest as the project is already delayed.

D. Reply by the respondent

11. That the present complaint in the present form cannot be maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.
12. That this Hon'ble Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
13. That due to the outbreak of the pandemic covid-19 in march 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view the difficulties in completing the project by Real Estate Developers, this Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26-05-2020. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.
14. 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.

15. 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. 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.
16. 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 apartment 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 for increased manifold but the government of Haryana had failed to increase the allotment price. The government of Haryana had failed to take into account the increase in the construction cost since the

policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of affordable housing policy, 2013. The license for the project paradise was granted on 30-05-2016 and the respondent was permitted to sell the units and 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 are attached herewith which clearly proves that the entire construction has been done and the formalities of obtaining occupation certificate remains pending. The respondent had applied for grant of occupation certificate vide application dated 28-04-2023 and the same is expected soon.

17. Copies of all the relevant documents have been duly 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

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

18. 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

The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

19. 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 jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

20. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the act or the said rules has been executed inter se parties. The authority is of the view that the act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the act. Therefore, the provisions of the act, rules and agreement have to be read and interpreted harmoniously. However, if the act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the act and the rules after the date of coming into force of the act and the rules. Numerous provisions of the act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

*119. *Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....*

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the*

validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

21. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal observed- as under

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not

in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding delay due to force majeure circumstances.

23. 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, 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 subject apartment within stipulated time i.e., by 28.07.2021. 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 completion date of the aforesaid project in which the subject apartment is being allotted to the complainant is 28.07.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is 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. So, in such case the due date for handing over of possession comes out to 28.01.2022.

24. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the prescribed rate,

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.

25. 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.
26. 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., 27.10.2023 is 10.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
27. 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;"*

28. 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.
29. 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. By virtue of clause 8.1 of the agreement executed between the parties on 06.03.2017, the possession of the subject apartment was to be delivered within stipulated time i.e., by 28.01.2022. As far as grace period is concerned, the same is allowed for the reasons quoted above. The respondent has delayed in offering the possession and the same is not offered till date. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 28.01.2022 till date of valid offer of possession after obtaining OC plus two months or date of actual handover 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. Directions of the authority

30. 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 delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 28.01.2022 till date of valid offer of possession after obtaining OC plus two months or date of actual handover of possession whichever is earlier.
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters

to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

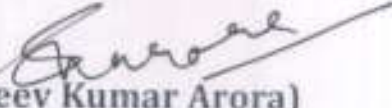
iii. The respondent is directed to offer the possession of the allotted apartment within two months after obtaining OC from the concerned authority.

iv. The promoter shall not charge anything which is not part of the BBA.

31. Complaint stands disposed of.

32. File be consigned to registry.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.10.2023

HARERA
GURUGRAM