

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

Complaint no.	:	2366 of 2023
Date of filing:		16.06.2023
Date of decision :		01.03.2024

Gopal Kumar Gambhir

R/o # 639 Bhingarh Kheri, Part II near apna enclave  
railway road, Gurugram, Haryana

**Complainant**

Versus

M/s Pivotal Infrastructure Pvt. Ltd.

Office address: 309, 3<sup>rd</sup> floor, JMD Pacific Square, Sector  
15, Part-II, Gurugram, Haryana-122001

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri. Viajy Pal Chohan(Advocate)

**Complainant**

Shri Sidharth Sehjwal (AR of respondent)

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

2. The particulars of the project, the amount of 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.N.	Particulars	Details
1	Name and location of the project	"Riddhi Siddhi" 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.	T6-406, 4 <sup>th</sup> floor, Tower-T6 (page 20 of complaint)
8	Unit area admeasuring	487 sq. ft. (Carpet area) (page 20 of complaint)
9	Date of allotment	05.09.2015



		(page 16 of complaint)
10	Date of builder buyer agreement	23.02.2016 (Page 19 of complaint)
11	Date of building plan approval	17.10.2014 (page 18 of reply)
12	Environmental clearance dated	22.01.2016 (page 24 of reply)
13	Possession Clause	<b>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</b> <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>
14	Due date of possession	22.01.2020  [Due date of possession is calculated from the date of environmental clearance dated 22.01.2016 being later]

15	Total sale consideration	Rs.19,98,000/- (exclusive of taxes) (page 22 of complaint)
16	Amount paid by the complainant	Rs.21,19,567.62/- (including taxes) (as per reminder letter dated 06.03.2023 on page 60 of complaint) Amount of ₹ 37,370/- paid as per receipt dated 21.04.2023 issued by respondent
17	Occupation certificate	Not yet obtained
18	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- That being impressed by the advertisement shown by the respondent through various mode of communication including but not limited to newspapers and pamphlets the complainant came to know that the respondent is developing an Affordable Group Housing Colony under the name and style of "Riddhi Siddhi" in Village Kherki Majra Dhankot, Sector 99, Tehsil and District Gurgaon (hereinafter referred to as the "said project". under the Affordable Housing Policy, 2013 issued by the Government of Haryana. Under this policy the respondent invited application from general public.
  - That the complainant applied for allotment of a residential apartment with the respondent vide application no. 1102 along with necessary documents and booking amount ₹1,00,000/-. It is not out of place to mention that under the Affordable Housing Policy, 2013, the allotment of the apartment was to be done on the



basis of draw of lots. That the complainant was allotted a 2 BHK apartment bearing no. 406 on fourth floor in tower no. T-6, having carpet area 487sq. ft. as well as allotment of a two-wheeler car parking (hereinafter referred to as the "apartment") in the said project, in a draw of lots conducted by the respondent in presence of official of Town and Country Planning Department, Haryana. The allotment was further confirmed vide allotment letter dated 05.09.2015 issued by the respondent. The allotment of the apartment was made against total sale consideration ₹19,98,000/- which is inclusive of booking amount paid by the complainant and the total sale consideration was to be paid within a period of 36 months from the date of allotment.

- c. That it is not out of place to mention that building plans of the project were sanctioned on 17.10.2014 and environmental clearance were received on 22.01.2016. That a one sided apartment buyer's agreement was executed by the respondent in favour of the complainant on dated 23.02.2016 (in short "Agreement". The terms and conditions of the agreement were totally one sided in favour of the respondent and against the complainant.
- d. That as per the clause 8.1 of the agreement the possession of the apartment was to be delivered within a period of 4 (four) years from the date of grant of sanction of buildings plans for the project or the date of receipt of all the environmental clearance necessary for the completion of the construction and development of the project, whichever is later. That the due date of possession of the

- apartment was on 21.01.2020 calculated from the date of environment clearance as per the terms of the agreement.
- e. That pursuant to the terms and conditions of the agreement the complainants have been continuously and regularly paying the amount pursuant to the demand letters issued by the respondent and as per the schedule of payment. Till date of filing the complaint in hand the complainants have paid an amount of ₹20,60,471/- inclusive taxes to the respondent.
- f. That the complainant, sometime in December, 2019, visited the site of the project and to their utter shock noticed that there is no construction work of the project since a long without any hint or semblance of construction activity. Thereafter the complainant approached the office of the respondent and enquired the staff regarding construction and completion of the project, but there was no satisfactory reply from any of the officials of the respondent. That the complainant subsequently kept following up but respondent did not provide any information to the complainant. It is submitted that till the date of filing the present complaint only bare structure of the few of the towers is standing there at project site.
- g. That whenever the complainant visited the office of the respondent, he was sent back on verbal assurance that his grievance would soon be redressed and possession of the apartment would be offered very soon after the completion of the project. However, till date there is no progress at all.



- h. That as the respondent failed to live up of its commitment and failed to deliver the possession of the apartment to the complainants by due date, the complainants asked the respondent for delay penalty on the amount paid by them along with compensation, but he grievance of the complainant has not been redressed by the respondent.
- i. That due to non-performance of its obligations and duties the complainant is going through mental pain and agony as he is paying rent as well as monthly instalment to the bank.
- j. That the entire sequential of events leading to the instant complaint establish the malafide intent of the respondent to defraud the complainant of his hard earned money. in this hue, it is reverentially submitted that such conduct on the part of the respondent are tantamount to breach of the contractual obligations of the agreement. Ergo, the complainant is entitled to exercise its right conferred by the Real Estate (Regulation & Development) Act, 2016 under section 31 read with section 19(3) read with section 18 on in alternative section 19(4) read with section 18 of the Act.
- k. That this Hon'ble Authority has ruled out that the developers cannot use the force majeure clause for lack of approvals, financial crises and any other proceedings and directed the builder to handover the possession of the apartment and to pay an interest. That the great prejudice shall be caused to the complainant if the present complaint with humble submission and relief are not allowed.

- l. That due to the acts of the above and terms and conditions of the agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of aforesaid act of unfair trade practice.
- m. That there are clear unfair trade practices and breach of contract and deficiency in services of the respondent and much more a smell of playing fraud with the complainant and other allottees and is prima facie clear on the part of the respondent which makes them liable under the provisions of the RERA Act.
- n. That the complainant does want to withdraw from the project. The respondent has not fulfilled its obligations provided under the RERA Act, 2016 and therefore the respondent is obligated to pay interest at the prescribed rate for every month of delay till the handing over of the possession.
- o. That the present complaint has not been filed by the complainant for seeking compensation, without prejudice, complainant reserve the right to file a complaint for grant of compensation with the Adjudicating Officer.

**C. Relief sought by the complainants:**

4. The complainant has sought following relief(s):
  - a. Direct the respondent to pay delay possession charges on paid amount till date of handing over of possession.
  - b. Direct the respondent to handover the physical possession of the unit to the complainants after receipt of OC.



5. On the date of hearing, the authority explained to the respondent/promoters 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 by way of written reply made the following submissions:

a. 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. That 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 Hon'ble Authority till 31.08.2020.

b. 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 of 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. Thereafter due to the second Covid wave from January to May 2021 once again the construction activities came to a standstill. The Covid pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by this Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the Covid lockdown. Furthermore, the Covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.

- c. 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.



- d. 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 complaint making timely payments. The complaint, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due instalments as is evident from the demand letter. Therefore, the complaint is forbidden to demand the timely performance of the 'contractual obligation' by the respondent wherein the complaint herself had failed to perform his part of the 'contractual obligations' on time.
- e. 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 instalments. 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 Riddhi Siddhi was

granted on 11.08.2014 and the respondent was permitted to sell the units at the allotment price of ₹4,000/- per sq. ft. the project is being constructed by the respondent and is near in completion. The photographs of the project are attached herein which clearly proves that the project is ready to be handed over and the formalities of obtaining occupation certificate remains pending.

f. That the project Riddhi Siddhi, Sector - 99, Gurugram is an affordable group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013, wherein the Government of Haryana has set a razor thin margin to make housing available for all. Thus, the grant of interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as applicable to other normal group housing real estate projects is wholly unreasonable and unjust, will impose unnecessary financial burden on the respondent and it shall have a cascading effect on the development and construction works of the project and in obtaining all other relevant approvals.

g. That since the said project is located at a prime location near the Dwarka Expressway, Gurugram and there is huge premium in the open market on the flats situated in said project which would compensate the allottees of the project in more than adequate manner including any compensation for the delay in delivery of the project. This is further to note here that the respondent is not seeking any enhancement of price or payment other than what has been prescribed under the Affordable Housing Policy, 2013.

7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

**E. Jurisdiction of the authority**

8. The plea of the respondents 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 the 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 completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

.....  
*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant.**

**F.I. Direct the respondent to handover the physical possession of the unit to the complainants after receipt of OC.**

12. The respondent promoter has not obtained the OC for the subject unit till date. The issuance of occupational certificate by the competent authority in itself is a proven fact that the promoter has sought all necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. as these clearances are preconditions for grant of OC. Therefore, respondent promoter is directed to offer the possession of the subject unit complete in all respect as per specifications as mentioned in the brochure within 2 months after receiving the OC for the same from the competent authority.

**F.II. Direct the respondent to pay delay possession charges on paid amount till date of handing over of possession.**

13. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges on the amount paid by

him in respect of subject unit. Sec. 18(1) of the Act is reproduced below for ready reference:

***"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. -***

***in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

***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)*

14. Clause 8.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

***"8.1. EXPECTED TIME FOR HANDING OVER POSSESSION***

***Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall 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."***

15. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations, etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (17.10.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later. The period of 4 years is calculated from environment clearance i.e., 22.01.2016 being later. Therefore, the due date of handing over possession is 22.01.2020.





17. **Admissibility of delay possession charges at prescribed rate of interest:** 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."*

18. 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.
19. 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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
20. 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;”*

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8.1 of the agreement executed between the parties on 23.02.2016, the possession of the subject apartment was to be delivered within 4 years from date of building plan approval or environment clearance whichever is later. The period of 4 years is calculated from environment clearance i.e., 22.01.2016 being later. Therefore, the due date of handing over possession is 22.01.2020. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of

handing over of possession or a valid offer of possession after obtaining OC from the competent authority 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.

**G. Directions of the authority**

23. 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):

- a. The complainant is entitled to delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.85%p.a. for every month of delay on the amount paid by him to the respondent from due date of possession i.e., 22.01.2020 till the date of handing over of possession or a valid offer of possession after obtaining OC from the competent authority 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.
- b. The respondent promoter is directed to offer the possession of the subject unit complete in all respect as per specifications as mentioned in the brochure within 60 days after receiving OC from the competent authority.
- c. The rate of interest chargeable from the allottees 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 allottees, in case of


default i.e., the delayed possession charges as per section 2(za) of the Act.

- d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

24. The complaint stands disposed of.

25. File be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 01.03.2024

**HARERA**  
**GURUGRAM**