

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of decision: 16.02.2024**

NAME OF THE BUILDER		M/S PIVOTAL INFRASTRUCTURE PVT. LTD.	
PROJECT NAME		RIDDDHI SIDDHI	
S. No.	Case No.	Case title	Appearance
1	CR/446/2023	Dalip Singh V/S M/S Pivotal Infrastructure Pvt. Ltd.	Sh. Rajan Hans Sh. Siddharth Sejwal (AR)
2	CR/429/2023	Seema Kaushik and Deepak Kaushik V/S M/S Pivotal Infrastructure Pvt. Ltd.	Sh. Rajan Hans Sh. Siddharth Sejwal (AR)

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Riddhi Siddhi situated at Sector-99, Gurugram being developed by



the same respondent/promoter i.e., M/s Pivotal Infrastructure Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Riddhi Siddhi" at sector 99, Gurgaon, Haryana.
Project area DTCP License No.	6.19375 acres 86 of 2014 dated 09.08.2014 valid upto 08.08.2019
Rera Registered	Registered vide no. 236 of 2017 extension 177/2019 dated 30.12.2019 valid upto 31.08.2020
Possession clause: 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..	
Date of Sanction of building plans: 17.10.2014 Date of environment clearance: 22.01.2016	
Due date of possession: 22.01.2020 [Calculated from the date of environment clearance]	
Occupation certificate: Not obtained Offer of possession: Not offered	



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/446/2023 Dalip Singh V/S M/S Pivotal Infrastructure Pvt. Ltd. DOF: 07.02.2023 Reply status: 12.04.2023	1001, 10th floor, Tower-T2	487 sq. ft.	16.11.2015	22.01.2020	TSC: - Rs. 19,98,000/- AP:- Rs. 21,56,903/-	DPC, Possession
2.	CR/429/2023 Seema Kaushik and Deepak Kaushik V/S M/S Pivotal Infrastructure Pvt. Ltd. DOF: 07.02.2023	206, 2 nd floor, Tower-T2	487 sq. ft.	08.12.2015	22.01.2020	TSC: - Rs. 19,98,000/- AP: - Rs. 20,94,465/-	DPC, Possession



	Reply status: 12.04.2023						
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)							

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking seeking possession of the unit along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/446/2023 Dalip Singh V/S M/S Pivotal Infrastructure Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

A. Project and unit related details

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

CR/446/2023 Dalip Singh V/S M/S Pivotal Infrastructure Pvt. Ltd.

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.	1001, 10th floor, Tower-T2 (page 24 of complaint)
8	Unit area admeasuring	487 sq. ft. (page 24 of complaint)
10	Date of builder buyer agreement	16.11.2015 (Page 23 of complaint)
11	Date of building plan approval	17.10.2014 (page 19 of reply)
12	Environmental clearance dated	22.01.2016 (page 25 of reply)
13	Possession Clause	8.1 EXPECTED TIME FOR HANDING OVER POSSESSION <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</i>

		<i>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 calculated from the date of environmental clearance dated 22.01.2016]
15	Basic sale consideration	Rs.19,98,000/- (exclusive of taxes) (page 26 of complaint)
16	Amount paid by the complainant	Rs.21,56,903/- (including taxes) (as admitted by respondent on page 8 of reply)
17	Occupation certificate	Not yet obtained
18	Offer of possession	Not offered

B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

8. That on the representation and advertisement by the respondent, the complainant booked a unit in the project named "Riddhi Siddhi" at Sector 99, Gurgaon, Haryana and was allotted a unit bearing no. T2-1001, 10th floor, Tower-T2 vide allotment letter. Thereafter, a buyer's agreement was executed between the parties on 16.11.2015 for a basic sale consideration

of Rs.19,98,000/- and she has paid a total sum of Rs.21,56,903/- in all.

9. That as per clause 8.1 of the buyer's agreement, the possession of the unit was to be handed over by 22.01.2020 but the same has not been offered till date despite receiving major sum of money from him.
10. That the respondent has not even paid any delay possession charges to the complainant till date. Therefore, he is seeking delay possession charges along with interest at prescribed rate from due date till actual delivery of the unit.
11. That due to above acts of the respondent the complainant has 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.

C. Relief sought by the complainant: -

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

- I. Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.

13. 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.

14. That the project named "Riddhi Siddhi" is a group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013.
15. That the complainant is seeking interest on the paid-up amount of Rs.21,56,903/-. But the amount received from the complainant is

19,98,000/- and the remaining amount was paid towards taxes.

16. That the project of the respondent was delayed on account of various intervening factors like lockdown imposed due to Covid-19 pandemic, shortage of labour, stopping of work by National Green Tribunal and other authorities due to increase in pollution etc.
17. That the allotment price of the unit was fixed by the Government of Haryana in 2013, but the same has not been revised till date. Although the construction cost was increased manifold, but the Government of Haryana had failed to increase the allotment price.
18. That the entire construction has been done and the project is near to competition. However, the formalities of obtaining occupation certificate remains pending.
19. 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

20. 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

21. 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

23. 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 objection raised by the respondent

F.I Objections regarding force majeure.

24. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by

National Green Tribunal to stop construction, shortage of labour and covid 19 pandemic. The plea of the respondent regarding various orders of the NGT and others, all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding Covid 19 is also devoid of merit as the covid came in 2020. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.

25. In the present complaint, the complainant intends 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."

26. Clause 8.1 of the buyer's 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..”

27. **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.*

28. 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.
29. 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., 16.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
30. 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;"

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
32. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8.1 of the agreement executed between the parties on 16.11.2015, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. Therefore, the due date of handing over possession was 22.01.2020. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is

delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 16.11.2015 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

33. Accordingly, it is the failure of the 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., 22.01.2020 till the date of valid offer of possession 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

34. 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):
- The respondent is directed to pay interest to the complainant against the paid-up amount 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 actual handing over of possession or valid offer of possession after obtaining occupation certificate whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.



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Complaint No. 446 of 2023 &
other

- 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 respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under Affordable Housing Policy.
 - iv. 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.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. The complaints stand disposed of.
37. Files be consigned to registry.

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(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2024