



BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.

1408 of 2023

First date of hearing: Date of decision:

07.09.2023 28.03.2024

1. Sh. Bhupender Singh

Complainants

2. Smt. Geeta Bansal

Both R/o: House no.-255, 2nd floor, Near Huda Park, Sector-10, Gurugram-

122001

Versus

M/s Pivotal Infrastructure Pvt. Ltd. **Regd. Office at**: 309,3rd Floor, JMD Pacific Square, Sector-15, Part-II, Gurugram-121001.

CORAM:

Shri Vijay Kumar Goyal

Member

Respondent

APPEARANCE:

Sh. Sunil Kumar (Advocate) Sh. Siddharth Sejwal (AR)

Complainants Respondent

ORDER

1. The present complaint dated 11.04.2023 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 provisions 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. 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 Up to 08.08.2019
5.	RERA Registered/ not registered	Registered vide no. 236 of 2017 dated 19.09.2017 valid up to 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.	907, 9th floor, Tower-T1 (As per page no. 25of the complaint)
8.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 25 of the complaint)
9.	Date of builder buyer's agreement	04.11.2015 (As per page no. 24 of the complaint)
10.	Date of building plan approval	17.10.2014 (As per page no. 15 of the reply)
11.	Environmental clearance dated	22.01.2016 (As per page no. 21 of the reply)
12.	Possession clause	8.1 EXPECTED TIME FOR HANDING OVER POSSESSION Except where any delay is caused of account of reasons expressly provided for under this Agreement and other situation beyond the reasonable control of the Company and subject to the Company having obtained the cocupation/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. (As per page no. 34 of the complaint)
13.	Due date of possession	[Due date of possession calculated from the date of environmental clearance dated 22.01.2016 being later]
14.	Total sale consideration	Rs.19,98,000/- (As per page no. 27 of the complaint)
15.	Amount paid by the complainants	Rs.21,19,532/- (As per demand letter dated 09.01.2023 on page no. 56 of the complaint) Rs.1,00,000/- (As per page no. 5 of the reply)
16.	Occupation certificate	Applied on 22.12.2022 but not yet obtained (As per page no. 40 of the reply)

B. Facts of the complaint:

- 3. The complainants have made the following submissions in the complaint:
 - I. The complainants, Sh. Bhupender Singh and Smt. Geeta Bansal are peace loving and law-abiding citizens of India, who nurtured hitherto an un-realized dream of having their own house in upcoming societies with all facilities and standards, situated around serene and peaceful environment.
 - II. The grievances of the complainants is related to breach of contract, false promises, gross unfair trade practices and deficiency in the services committed by the respondent.





- III. The complainants were approached by company personals "M/s Pivotal Infrastructure Private Limited." They boosted about the project namely "Riddhi Siddhi" situated at sector-99 and claiming the project as one of the best project with serene infrastructure environment and claiming very demanded project. In this way the complainants met the respondent's sale representative and hence, booked an apartment bearing no. 907, 9th floor, Tower no. T-1, having carpet area approx. 487 sq. ft. on a total sale consideration of Rs.19,98,000/- under Affordable Housing Policy and paid a sum of Rs.1,00,000/- vide application dated 22.05.2015 through demand draft/ pay order in favour of the respondent.
- IV. That the complainants paid as and when demanded by the respondent and have paid Rs.21,19,532/- which is more than the consideration amount. The respondent vide demand letter dated 09.01.2023 and 20.01.2023 demanding VAT amounting to Rs.62,437/- out of which the complainants have paid Rs.25,066/- and the balance of Rs.37371/- demanded vide letter dated 09.01.2023 and later on vide letter dated 20.01.2023. Interest on VAT payable till 20.01.2023 Rs.5,934/-. The complainants are seeking direction to stop imposing interest arbitrary upon the complainants.
- V. That the complainants in the interest of justice are seeking direction/order/instruction(s) from the Authority in favour of complainants for delay possession interest and other reliefs till offer of possession as per Act of 2016.
- VI. That all the request made by the complainants before the respondent goes in vain and there is no positive reply and solutions offered by the respondent and hence, at last the complainants have nowhere to approach



except the Hon'ble Authority seeking justice as per Act of 2016 and Rules 2017.

C. Relief sought by the complainants:

- The complainants have sought following relief(s):
 - Direct the respondent to pay interest for every month of delay at the prevailing rate of interest as per Act of 2016.
 - Direct the respondent to execute registered sale deed in favour of complainants after taking occupation certificate from the competent Authority along with all amenities.
 - iii. Direct the respondent to revoke arbitrary interest of Rs.5,934/-on outstanding amount of Rs.37,371/- charged by the respondent and to restrain the respondent from imposing arbitrary interest.
 - iv. Direct the respondent to issue an account statement of the said unit in favour of the complainants.
 - v. Direct the respondent to pay litigation expenses of Rs.30,000/-.
- 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:
 - a. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before the Authority as the subject matter of the claim does not fall within the jurisdiction of the Authority.





- b. 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 on 17.10.2014 and also obtained the environmental clearance on 22.01.2016.
- c. That the respondent further obtained the registration under Act of 2016 and was granted the registration no. 236 of 2017. The said RERA registration was valid till 08.08.2019 which was extended by the Hon'ble Authority till 31.08.2020.
- d. That it is clearly evident from the aforesaid approvals granted by the various authorities, 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, the 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-19 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 Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid-19 lockdown. Furthermore,



the pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent in a financial crunch, which was beyond the control of the respondent.

- e. 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, Environment Pollution (Control and Prevention) Authority, National Capital Region, 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.
- f. That the delivery of the unit 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 whichever is later, was incumbent upon the complainants making timely payments. The complainants, in the present matter, have 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.
- g. 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 has increased the manifolds 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 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 completion.

- h. That the project 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.
- i. That since the 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 the 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.
- j. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead the Authority for the reasons stated above. That it is further submitted that none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
- 7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 allottees 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.

9. 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 objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions by Department of Environment and Climate Change and Haryana State Pollution Control Board, weather conditions in NCR region, increase in cost of construction material and shortage of labour, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. The events





taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to pay delayed possession charges at the prevailing rate of interest

11. In the present complaint, the complainants intend to continue with the project and are 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)

- 12. Clause 8.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:
 - 8. Handing over of possession

......

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."

(Emphasis supplied)





- 13. The due date of possession of the apartment as per clause 8.1 of the apartment buyer's agreement is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020.
- 14. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she 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.

- 15. 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.
- 16. 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., 28.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.



17. The definition of term 'interest' as defined under section 2(za) 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-

 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;"

- 18. 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 the complainant in case of delayed possession charges.
- 19. The Authorized representative of the respondent during proceedings of the day dated 28.03.2024 stated that the construction is completed and an application for the grant of occupation certificate has already been made to the concerned authority on 22.12.2022 but occupation certificate is yet to be obtained.
- 20. 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. The due date of handing over possession is 22.01.2020. A document is placed on record by the respondent which shows that an application for grant of occupation certificate was made on



22.12.2022 which is yet to be approved by the competent authority. Therefore, 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. 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 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.

21. During proceedings of the day dated 28.03.2024, the counsel for the complainants has brought to the notice of the Authority that the amount paid by the complainants to the respondent towards instalment is Rs.20,23,066/- and Rs.96,465/- towards taxes as per demand letter dated 20.01.2023 placed on page no. 55 of the complaint confirming the same. Thus, the amount paid by the complainants comes to Rs.21,19,532/-.

G.II Direct the respondent to execute registered sale deed in favour of complainants after taking occupation certificate from the competent Authority along with all amenities.

22. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.





- 23. The occupation certificate of the unit was applied on 22.12.2022 but not yet obtained nor possession of the subject unit has been offered till date. So, the respondent is directed to make a valid offer of possession of the unit after obtaining occupation certificate and get the conveyance deed executed in terms of section 17(1) of the Act of 2016 after requisite payment of stamp duty and registration charges by the complainants.
 - G.III Direct the respondent to revoke arbitrary interest of Rs.5,934/-on outstanding amount of Rs.37,371/- charged by the respondent
 - G.IV To restrain the respondent from imposing arbitrary interest and to issue an account statement of the said unit in favour of the complainants.
- 24. The above relief(s) sought by the complainants are taken together beingconnected.
- 25. The complainants have sought relief of revocation of interest charged on the delayed instalment and to restrain the respondent from imposing arbitrary interest.
- 26. The definition of term 'interest' as defined under section 2(za) 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—

- (iii) 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;
- (iv) 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;"
- 27. 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.

28. Thus, the respondent is directed to charge interest at the rate of 10.85% as per mandate of Act of 2016 and to issue a revised account statement after adjusting the interest charged not in terms of the Act of 2016, if any.

G.V Direct the respondent to pay litigation expenses of Rs.30,000/-.

29. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H. 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 delay interest on the paid-up amount of Rs.21,19,532/- by the complainants 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(s) 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(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges and interest not charged as per mandate of Act of 2016 within 30 days and complainants are directed to pay outstanding dues, if any remains 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 is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainants.
- v. The respondent shall not charge anything from the complainants which is not the part of the builder buyer's agreement.
- vi. The rate of interest chargeable from the allottee(s) 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.
- 31. Complaint stand disposed of.
- 32. File be consigned to registry.

(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2024