

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

Date of decision: 24.05.2024

NAME OF THE BUILDER		Pyramid Infratech Private Limited	
PROJECT NAME		Urban Homes - II	
S. No.	Case No.	Case title	Appearance
1	CR/1327/2023	Anant Gupta V/s Pyramid Infratech Private Limited	Ashwani Kumar (Advocate for Complainant) Priyanka Agarwal (Advocate for Respondent)
2	CR/1330/2023	Sapna Gangwar V/s Pyramid Infratech Private Limited	Ashwani Kumar (Advocate for Complainant) Priyanka Agarwal (Advocate for Respondent)

CORAM:

Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of the 2 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, Pyramid Urban Homes - II situated at Sector-86, Gurugram being developed by the respondent/promoter i.e., Pyramid Infratech Private Limited. 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 delay possession charges at prescribed rate of interest.
 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	"Pyramid Urban Homes -II" at Sector 86, Gurgaon, Haryana.
Project area	5.29 acres
DTCP License No.	154 of 2014 dated 09.09.2014 valid up to 21.01.2020
Name of Licensee	Pyramid Infratech Pvt. Ltd.
RERA Registration	Registered vide no. 253 of 2017 dated 03.10.2017 valid up to 28.02.2020
Possession Clause: 3.1 POSSESSION	
"Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having timely complied with all obligations, formalities or documentation, as prescribed by developer and not being in default under any part hereof and apartment buyer agreement including but not limited to the timely payments of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance,(hereinafter referred to as the commencement date), whichever is later."	
Occupation Certificate: Obtained on 25.09.2020	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/1327/2023 Anant Gupta V/s Pyramid Infratech Private Limited DOF: 28.03.2023 Reply filed on: 06.09.2023	25.09.2015 (Page 24 of reply)	605, 6 th floor, Tower-06 (page 18 of complaint)	503 sq. ft. (Carpet area) (page 18 of complaint)	22.01.2020 [Due date of possession is calculated from the date of environmental clearance dated 22.01.2016 being later]	Total consideration - Rs.22,21,637/- Amount Paid: - Rs.22,36,614/- (As per annexure - II Final statement of account dated 22.10.2020 on page no. 47 of complaint) *Inadvertently paid amount is mentioned as Rs.22,21,637/-	DPC, and litigation cost
2.	CR/1330/2023 Sapna Gangwar V/s Pyramid Infratech Private Limited DOF: 28.03.2023 Reply filed on: 06.09.2023	10.11.2015 (Page 24 of reply)	806, 8 th floor, Tower-04 (page 18 of complaint)	500 sq. ft. (Carpet area) (page 26 of reply)	22.01.2020 [Due date of possession is calculated from the date of environmental clearance dated 22.01.2016 being later]	Total consideration - Rs.22,64,747/- Amount Paid: - Rs.22,67,143/- (As per annexure - II Final statement of account dated 22.10.2020 on page no. 47 of complaint) *Inadvertently paid amount is	DPC, and litigation cost

						mentioned as Rs.22,64,747/-	
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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, seeking delay possession charges at prescribed rate of interest.
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/1327/2023 Anant Gupta V/s Pyramid Infratech Private Limited** are being taken into consideration for determining the rights of the allottee(s).
 - A. **Project and unit related details**
7. The particulars of the project, the details of 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:

CR/1327/2023 Anant Gupta V/s Pyramid Infratech Private Limited

S.N.	Particulars	Details
1.	Name of the project	"Pyramid Urban Homes - II", Sector 86, Gurugram

2.	Nature of project	Affordable Housing Project
3.	DTPC License no.	154 of 2014 dated 09.09.2014
	Validity upto	21.01.2020
	Name of licensee	Satpal Singh S/o Jagmal Singh and 4 others
	Licensed area	5.29 Acre
4.	RERA Registered/ Not Registered	Registered 253 of 2017 dated 03.10.2017 valid upto 28.02.2020
5.	Allotment letter	06.09.2015 (Page 18 of complaint)
6.	Unit no.	605 on 6 th floor in tower - 6 [page no. 18 of complaint]
7.	Unit measuring	503 Sq. Ft. (page no. 26 of reply)
8.	Date of execution of space buyer's agreement	25.09.2015 (Page no. 24 of reply)
9.	Possession clause	3.1. Possession <i>3.1 the developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later.</i>
10.	Date of approval of building plans	25.05.2015 (page 120 of reply)

11.	Date of environment clearance	22.01.2016 (page 126 of reply)
12.	Due date of possession	22.01.2020 (Calculated from the date of environment clearance being later)
13.	Total sale consideration	Rs. 22,21,637/- (As per annexure - II Final statement of account dated 22.10.2020 on page no. 47 of complaint)
14.	Total amount paid by the complainant	Rs. 22,36,614/- (As per annexure - II Final statement of account dated 22.10.2020 on page no. 47 of complaint)
15.	Occupation certificate dated	25.09.2020 (Page no. 42 of reply)
16.	Offer of possession	22.10.2020 (Page no. 35 of reply)
17.	Possession certificate w.r.t. handover actual physical possession	07.12.2020 (Page 41 of reply)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- That the respondent got approvals from competent authorities and advertised an affordable housing project called Pyramid Urban Homes-II, Sector 86 Gurugram. The complainant booked a dwelling unit under Affordable Housing Policy 2013, in 2015 and was allotted a flat number

605 tower 06 in Pyramid Urban Homes-II, Sector 86 Gurugram. That the respondent is adopting illegal and restrictive trade practices and has denied execution of conveyance deed to him on the pretext that the he has preferred a complaint before AO (HARERA). Now he is before DCDRC for getting the justice on this issue. However, it is again conformed that the issue in this complaint is not pending before any other Commission/ Forum/ Court/ Authority.

- ii. That in accordance with the above provisions the project must be completed within a period of 4 years from the date of approval of building plan or grant of environmental clearance, whichever is later, which in this case is 22.01.2016. As per information available with the complainant, the building plans were approved on 25.05.2015 and the environment clearance was issued on 22.01.2016 being later. Out of both, the later date is 22.01.2016. Hence, the date of the commencement of the project is 22.01.2016. The respondent is unnecessarily taking pleas of COVID-19 which was announced effective 25.03.2020, much after the stipulated date of completion. As such the respondent cannot take benefit of zero period.
- iii. That the complainant does not 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.

C. Relief sought by the complainant: -

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

- I. Direct the respondent to pay interest at prescribed rate on delayed possession from the due date of possession i.e. 22.01.2020 till date of actual possession.
 - II. Direct the respondent to pay litigation cost.
10. 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: -

11. The respondent contested the complaint on the following grounds: -
- i. That the present complaint under reply has been filed without application of mind to the actual factual matrix, circumstances and controversy involved in the case at hand and is liable to be dismissed in the interest of justice. That the present complaint filed by the complainant is wholly misconceived, erroneous, unjustified and untenable in the eyes of law.
 - ii. That he has concealed the material facts and has hidden the truth. As per agreement clause 09, and letter of offer of possession, allottee needs to pay stamp duty charges. However, the complainant neither showed any interest for the execution of conveyance deed and nor did pay the stamp duty charges.
 - iii. Furthermore, as per Section 19(11), of RERA Act, 2016, every allottees shall participate towards the registration of conveyance deed. An operative part of Section 19(11) is reproduced hereinunder:

"Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act".

- iv. That the complaint is neither maintainable nor tenable and is liable to be dismissed. The buyer's agreement was executed between the parties on dated 25.09.2015. Thereafter, the respondent had offered possession and with mutual consent, the complainant took the possession and agreement was registered. That vide present complaint under reply he sought the delayed possession charges of the unit in question along with the compensation and interest thereon on the pretext that the respondent failed to complete construction on time.
- v. Furthermore, due to Covid-19 outbreak, the Authority had extended the due period for 6 months. The validity of project registration was up till 28.08.2020. Despite all aforesaid force majeure circumstances and due date of possession as per the agreement, the respondent has duly completed the construction of project as well as of the tower in which the subject unit is located before the due date of possession but due to outbreak of Covid 19 Competent Authority given the occupancy certificate on dated 25.09.2020 which was applied on 19.09.2019. After receiving of occupancy certificate respondent was offered possession of the said unit on 22.10.2022.
- vi. That the projected timelines for possession under affordable Housing policy are based on date of statutory approvals. It was not in the contemplation of the respondent that the force majeure would occur and the construction was also affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. Furthermore, the construction of project was halted on several times in direction of NGT and Environment Pollution (Prevention and Control) Authority, EPCA,

expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned within the Delhi-NCR region. The ban commenced from 08.11.2016 till 16.11.2016, and similar order passed in 09.11.2017 to 17.11.2017 & 31.10.2018 and was initially subsisted till 10.11.2018 whereas the same was further extended till 12.11.2018.

vii. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, he is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Approbate & Reprobate'. In this regard, the respondent reserves their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required. That vide present complaint under reply he sought the possession of the unit in question along with the compensation and interest thereon on the pretext that the respondent failed to complete construction. It is imperative to mention herein that the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity etc., were the reasons for delay in construction and after that Government took long time in granting occupancy certificate owing to its cumbersome process. Despite all aforesaid force majeure circumstances the respondent has duly completed the construction of project as well as of the tower in which the unit is located has been completed before the due date of possession but due to outbreak of Covid 19 Competent Authority given the occupancy certificate

on dated 25.09.2020 which was applied on 19.09.2019. After receiving of occupancy certificate respondent was offered possession of the said unit on 22.10.2022.

12. 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

13. 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

14. 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

15. 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.

16. 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 force majeure conditions.

17. 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 outbreak of the Covid-19 pandemic, orders/restrictions of the NGT as well as competent authorities, shortage of labour force in the NCR region etc. but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.01.2020. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas, the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic.

Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession. Further, the orders passed by NGT as well as other competent authorities 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. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant

- I. **Direct the respondent to pay interest at prescribed rate on delayed possession from the due date of possession till date of actual possession.**
18. 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."*
19. Clause 3.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

3.1 POSSESSION

" Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having timely complied with all obligations, formalities or documentation, as prescribed by developer and not being in default under any part hereof and apartment buyer agreement including but not limited to the timely payments of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the commencement date), whichever is later."

20. **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.

21. 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.
22. 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., 24.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

23. 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—

- (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;"*

24. 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.

25. 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 3.1 of the agreement executed between the parties on 25.09.2015, 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 the due date of possession.

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 25.09.2015 executed between the parties. Further, OC has been granted to the project on 25.09.2020. 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.

26. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 25.09.2015 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 offer of possession(22.10.2020) plus two months i.e., 22.12.2020 or actual handover of possession(07.12.2020) 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. In the present case the delayed possession charges is to be payable from 22.01.2020 till 07.12.2020(actual handover of possession, being earlier).

27. The project namely "Pyramid Urban Homes - II" was registered under section 3 of the Act of 2016 vide registration number 253 of 2017 dated 03.10.2017, which was valid up to 28.02.2020. Although the occupation certificate of the project has been received therefore, the promoter is

liable to further extension of the said project. Accordingly, the planning branch is directed to take the necessary action as per provisions of the Act of 2016.

28. Vide proceeding dated 01.03.2024, the counsel for the respondent stated that they have handed over the unit way back in November 2020 and now the complainant has stated that we are not getting the conveyance deed executed which is false and baseless. On the contrary it is observed that the complainant is not seeking any relief with respect to conveyance deed. Infact it was stated by the counsel for the complainant during course of proceeding that he has sought the relief of execution of conveyance deed before District consumer Dispute Redressal Commission, Gurugram and is only seeking delayed possession charges from the Authority.
29. The complainants are seeking relief w.r.t. litigation cost in the above-mentioned 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)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

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 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 which is 07.12.2020.
- ii. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under the policy of 2013.
- iv. 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.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in

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

31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. The complaints stand disposed of.
33. Files be consigned to the registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.05.2024



HARERA
GURUGRAM