

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

Date of Decision: 16.05.2024

NAME OF THE BUILDER		M/S PIVOTAL INFRASTRUCTURE PRIVATE LIMITED	
PROJECT NAME		"RIDDDHI SIDDHI"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3336/2023	Ms. Parul Kaushik V/S M/s Pivotal Infrastructure Private Limited	Shri Vijay Pal Chauhan Advocate and Shri. Sidharth Sejwal AR
2.	CR/3338/2023	Pankaj V/S M/s Pivotal Infrastructure Private Limited	Shri Vijay Pal Chauhan Advocate and Shri. Sidharth Sejwal AR

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
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" (Affordable Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Pivotal



Infrastructure Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues 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 along with interest and other.

3. The details of the complaints, reply to 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" by M/s Pivotal Infrastructure Private Limited, situated in Sector- 99, Gurugram.
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 of 2019 dated 30.12.2019 valid upto 31.08.2020
Possession Clause: - 8. Possession 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 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(s) of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder."</i>
Date of sanction of building plans:	17.10.2014
Date of approval of environmental clearance:	22.01.2016
Due date of possession:	22.01.2020 (Calculated from the date of environmental clearance, being later)
Occupation certificate:	- Not obtained. (Applied for OC on 22.12.2022)
Offer of possession:	Not offered

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Case no. and Case title	CR/3336/2023 Ms. Parul Kaushik V/S M/s Pivotal Infrastructure Private Limited	CR/3338/2023 Pankaj V/S M/s Pivotal Infrastructure Private Limited
Date of filing of complaint	02.08.2023	02.08.2023
Reply status	30.11.2023	30.11.2023
Unit no.	T3-1407, 14 th Floor, Tower-3 [As per page no.27 of the complaint]	T3-1408, 14 th Floor, Tower-3 [As per page no.22 of the complaint]
Area admeasuring	353 sq. ft. (Carpet area) [As per page no.27 of the complaint]	353 sq. ft. (Carpet area) [As per page no.35 of the complaint]
Date of apartment buyer's agreement	24.08.2016 [As per page no.24 of the complaint]	24.08.2016 [As per page no.21 of the complaint]
Due date of handing over of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016, being later]	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016, being later]
Total Consideration / Total Amount paid by the complainant	TSC: Rs.14,62,000/- [As per page no. 27 of the complaint] AP: Rs.15,14,465/- [As per receipt information at page no. 55-61 of the complaint]	TSC: Rs.14,62,000/- [As per page no. 24 of the complaint] AP: Rs.15,31,476/- [As per receipt information at page no. 51-54 of the complaint]
<p>The complainants in the above complaint(s) have sought the following reliefs:</p> <ol style="list-style-type: none"> 1. Direct the respondent to construct and complete the project in all respect and deliver the possession of the apartment allotted in favour of the complainant after obtaining occupation certificate from the concerned competent authorities. 2. Direct the respondent to pay delayed possession interest on the amount paid by the complainant at the prescribed rates from the due date of possession in terms of agreement till the actual date of possession on every month along with arrears as per the provisions of the RERA Act, 2016. 		
<p>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)</p>		

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession 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 also similar. Out of the above-mentioned case, the particulars of lead case **CR/3338/2023 titled as Pankaj V/S M/s Pivotal Infrastructure Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

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/3338/2023 titled as Pankaj V/s M/s Pivotal Infrastructure Private Limited

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 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.	T3-1408, 14 th floor, Tower-T3 (As per page no. 22 of the complaint)
8.	Unit area admeasuring	353 sq. ft. (Carpet area) (As per page no. 22 of the complaint)
9.	Date of allotment	03.04.2016 (As per page no. 16 of the complaint)
10.	Date of buyer's agreement	24.08.2016 (As per page no. 21 of the complaint)
11.	Date of building plan approval	17.10.2014 (As per page no. 18 of the reply)
12.	Environmental clearance dated	22.01.2016 (As per page no. 24 of the reply)
13.	Possession clause	8. HANDING OVER OF POSSESSION <i>8.1 Expected time for handing over possession</i> <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</i>

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		<i>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, being later.]
15.	Total sale consideration	Rs.14,62,000/- (As per page no. 24 of the complaint)
16.	Amount paid by the complainant	Rs.15,31,476/- (As per receipt information on page no. 51-54 of the complaint)
17.	Application for Grant of OC	22.12.2022 (page no. 43 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:
- I. That the complainant is law abiding citizen of India and belongs to low middle class family.
 - II. That being impressed by the advertisement shown by the respondent through various mode of communication including but not limited to news-papers and pamphlets the complainants 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.
 - III. That the complainant applied for allotment of a residential apartment with the respondent vide application no.978 on 03.04.2016 along with necessary documents and booking amount Rs.3,65,500/-. 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.

- IV. That the complainant was allotted a 1 BHK apartment bearing no.1408 on 14th floor in Tower no. T-3, having carpet area 353 sq. ft. as well as allotment of a two-wheeler car parking 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 03.04.2016 issued by the respondent. The allotment of the apartment was made against total sale consideration Rs.14,62,000/- 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.
- V. 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.
- VI. That a one sided apartment buyer's agreement was executed by the respondent in favour of the complainant on dated 24.08.2016. The terms and conditions of the agreement were totally one sided in favour of the respondent and against the complainant.
- VII. 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.
- VIII. 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.

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- IX. That pursuant to the terms and conditions of the agreement the complainant 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 complainant has paid an amount of Rs.15,31,476/- (inclusive of taxes) to the respondent.
- X. 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. That till the date of filing the present complaint only bare structure of the few of the towers is standing there at project site.
- XI. 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.
- XII. That as the respondent failed to live up of its commitment and failed to deliver the possession of the apartment to the complainant by due date, the complainant 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.

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- XIII. That due to non-performance of its obligations and duties the complainant is going through mental pain and agony and he is paying rent as well as monthly installment to the bank.
- XIV. That the entire *sequentia* 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 is 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.
- XV. That this Hon'ble Authority has ruled 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.
- XVI. That the great prejudice shall be caused to the complainant if the present complaint with humble submission and relief are not allowed.
- XVII. 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.
- XVIII. 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.

- XIX. That in a similar matter titled as "*Amit Verma Vs Pivotal Infrastructure Pvt. Ltd. Complaint No.5008 of 2021*", decided on 17.05.2022 pertains to the same developer and same project, this Hon'ble Authority has allowed the complaint filed by the complainant.
- XX. 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.
- XXI. 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 complainant:

9. The complainant has sought following relief(s):
- Direct the respondent to construct and complete the project in all respect and deliver the possession of the apartment allotted in favour of the complainant after obtaining occupation certificate from the concerned competent authorities.
 - Direct the respondent to pay delayed possession interest on the amount paid by the complainant at the prescribed rates from the due date of possession in terms of agreement till the actual date of possession on every month along with arrears as per the provisions of the RERA Act, 2016.the respondent to pay interest for every month of delay at the prevailing rate of interest as per Act of 2016.
 - The Complainant is also entitled to any other relief to which he is found entitled by this Hon'ble Authority.
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 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

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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

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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 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 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 "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

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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.

12. 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:

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

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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.

14. 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

15. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, outbreak of Covid-19 pandemic, etc. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion 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. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

G. Findings on the relief sought by the complainants:

- G.I Direct the respondent to deliver the possession of the apartment after obtaining of occupation certificate from the competent authority.**
- G.II Direct the respondent to pay delayed possession charges on paid amount from due date of possession to till actual date of possession at the prevailing rate of interest.**
- G.III The Complainant is also entitled to any other relief to which he is found entitled by this Hon'ble Authority.**

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16. The above mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

17. 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, —

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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)

18. 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."

19. 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.

20. **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.

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., 16.05.2024 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 the complainant in case of delayed possession charges.
25. The Authorized representative of the respondent during proceedings of the day dated 16.05.2024 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.
26. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8.1 of the buyer's agreement, the due date of handing over of possession of the unit in question is 22.01.2020 (calculated from the date of environmental clearance, being later). 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

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period. The authority is of the considered view that there is delay on the part of the respondent to offer the possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 24.08.2016 executed between the parties.

27. 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.

H. Directions of the Authority:

28. 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 delay interest on the paid-up amount of Rs.15,31,476/- 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.
 - 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

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- 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 within 30 days and complainant is 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 after obtaining of occupation certificate.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement.
 - v. 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.
29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
30. True certified copy of this order shall be placed in the case file of each matter.
31. Complaints stand disposed of.
32. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.05.2024