



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

**Date of decision: 05.04.2024**

NAME OF THE BUILDER		Pivotal Infrastructure Private Limited	
PROJECT NAME		Riddhi Siddhi	
S. No.	Case No.	Case title	Appearance
1	CR/2200/2023	Ashish Agnihotri V/s Pivotal Infrastructure Private Limited	Gaurav Rawat (Complainant) Sidharth Sejwal (Respondent)
2	CR/2161/2023	Ravi Kumar V/s Pivotal Infrastructure Private Limited	Gaurav Rawat (Complainant) Sidharth Sejwal (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, Riddhi Siddhi situated at Sector-99, Gurugram being developed by the respondent/promoter i.e., Pivotal Infrastructure 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 possession and 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:

<b>Project Name and Location</b>	<b>"Riddhi Siddhi" at Sector 99, Gurgaon, Haryana.</b>
<b>Project area</b>	6.19375 acres
<b>DTCP License No.</b>	86 of 2014 dated 09.08.2014 valid up to 08.08.2019
<b>Name of Licensee</b>	Pivotal Infrastructure Pvt. Ltd.
<b>RERA Registration</b>	Registered vide no. 236 of 2017 dated 19.09.2017 valid up to 31.08.2020
<b>Possession Clause: 8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</b>	
<i>" Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder."</i>	
<b>Occupation Certificate:</b> Not obtained	





Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit adm easuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/2200/2023 Ashish Agnihotri V/s Pivotal Infrastructre Private Limited DOF: 24.05.2023  Reply filed on: 12.10.2023	05.02.2016  (Page 23 of complaint)	106, 1 <sup>st</sup> floor, Tower-06  (page 26 of complaint)	45.24 3 sq. mtr. (Carpet area) (page 26 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.19,98,000/- (exclusive of taxes) (page 28 of complaint)  Amount Paid: - Rs.19,98,000/- (including taxes) (as admitted by respondent on page 7 of reply)	DPC, Possession and handover the complete unit in every aspect
2.	CR/2161/2023 Ravi Kumar V/s Pivotal Infrastructre Private Limited DOF: 29.05.2023  Reply filed on: 12.10.2023	14.11.2015  (Page 22 of complaint)	307, 3 <sup>rd</sup> floor, Tower-07  (page 23 of complaint)	487 sq. ft. (Carpet area) (page 23 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.19,98,000/- (exclusive of taxes) (page 25 of complaint)  Amount Paid: - Rs.19,98,000/- (including taxes) (as admitted by respondent on page 7 of reply)	DPC, Possession and handover the complete unit in every aspect

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over



- the possession by the due date, seeking possession and 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/2200/2023 Ashish Agnihotri V/s Pivotal Infrastructure 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/2200/2023 Ashish Agnihotri V/s Pivotal Infrastructure Private Limited**

S.N.	Particulars	Details
1	Name and location of the project	"Riddhi Siddhi" at sector 99, Gurgaon, Haryana
2	Nature of the project	Affordable Group housing
3	Project area	6.19375 acres
4	DTCP license no.	86 of 2014 dated 09.08.2014 valid upto 08.08.2019





5	RERA Registered/ not registered	Registered vide no. 236 of 2017 dated 19.09.2017 valid up to 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.	106, 1 <sup>th</sup> floor, Tower-06 (page 26 of complaint)
8	Unit area admeasuring	45.243 sq. mtr. (Carpet area) (page 19 of complaint)
9	Date of allotment	05.09.2015 (page 19 of complaint)
10	Date of builder buyer agreement	05.02.2016 (Page 23 of complaint)
11	Date of building plan approval	17.10.2014 (page 18 of reply)
12	Environmental clearance dated	22.01.2016 (page 25 of reply)
13	Possession Clause	<b>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</b> <i>Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the</i>



		<i>Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.</i>
14	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016, being later]
15	Total consideration	Rs.19,98,000/- (exclusive of taxes) (page 26 of complaint)
16	Amount paid by the complainant	Rs.19,98,000/- (including taxes) (as admitted by respondent on page 7 of reply)
17	Occupation certificate	Not yet obtained
18	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 was allotted a unit bearing no. T6-0106 in Tower No. T-6, having carpet area 487 sq. ft. in project of the respondent named





"Riddhi Siddhi" at Sector 99, Gurgaon, vide allotment letter dated 05.09.2015 for a total sale consideration Rs.19,98,000/- under the Affordable Housing Policy, 2013. Thereafter, an apartment buyer's agreement was executed between the parties regarding the said allotment on dated 05.02.2016.

II. That as per clause 8.1 of the agreement, the possession of the apartment was to be delivered within a period of 4 years from the date of grant of sanction of buildings plans for the project or the date of receipt of the environmental clearance, whichever is later. Accordingly, the due date of possession of the apartment was 22.01.2020.

III. That pursuant to the terms and conditions of the agreement, the complainant has 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, the complainant has paid an amount of Rs. 19,98,000/- plus taxes to the respondent.

IV. That the complainant, on various occasions, visited the project site and was utterly shocked to see that there was no construction work at the project since a long without any hint or semblance of construction activity. Thereafter, the complainant approached the office of the respondent and enquired the staff regarding construction and completion of the project, but there was no satisfactory reply from any of the officials of the respondent. That the complainant subsequently kept following up, but respondent did not provide any information to the complainant. It is submitted that till the date of filing the present complaint only bare structure of the few of the towers is standing there at project site.



- V. That 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 him along with compensation, but the grievance of the complainant has not been redressed by the respondent.
- VI. 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.

**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 complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, EC etc., before handing over the physical possession of the flat.
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 construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period





with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, New Delhi; Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi; Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed to the delay in completing the project within the specified time period.

ii. That the complainant had failed to make timely payments and there were substantial delays in making the payments of the due instalments. Therefore, the complainant is forbidden to demand the timely performance of the 'contractual obligation' by the respondent wherein the complainant himself had failed to perform his part of the 'contractual obligations' on time.

iii. That the present project is an affordable group housing project being developed in accordance with the provision of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the respondent was paid the allotment price in instalments. Though, the allotment price was fixed by the Government of Haryana in the year 2013, but the same was not revised till date. Although the construction cost for increased manifold, but the Government of Haryana had failed to increase the allotment price.

iv. That 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.

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 much 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 i.e. 22.01.2020 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 8.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

**8.1 EXPECTED TIME FOR HANDING OVER POSSESSION**



*"Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.."*

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., 05.04.2024 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 8.1 of the agreement executed between the parties on 05.02.2016, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. Therefore, the due date of handing over





possession was 22.01.2020. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 05.02.2016 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate and so, it can be said that the complainant shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given two months time from the date of offer of possession. This two months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due





**HARERA**  
**GURUGRAM**

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date of possession i.e., 22.01.2020 till the expiry of 2 months from the date of valid offer of possession or actual handing over of possession and whichever is earlier.

27. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 05.02.2016 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of valid offer of possession plus 2 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.

28. The project namely "Riddhi Siddhi" was registered under section 3 of the Act of 2016 vide registration number 236 of 2017 dated 19.09.2017, which was valid up to 08.08.2019. Thereafter, the completion date was extended of the said registration certificate vide number 177 of 2019 dated 30.12.2019, which also expired on 31.08.2020. Since the occupation certificate of the project has not been received till now 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.

#### **H. Directions of the authority**

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations





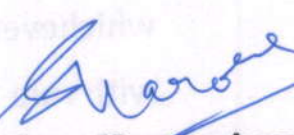
cast upon the promoter as per the function entrusted to the authority under section 34(f):

- 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 or valid offer of possession after obtaining occupation certificate plus two months whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- iii. The respondent shall handover the unit complete in all aspects as per specifications of the agreement.
- iv. 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.
- v. 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- vi. 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.

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

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.04.2024

  
**HARERA**  
GURUGRAM