

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

Complaint no. : 3358 of 2023
Date of complaint : 25.07.2023
Date of decision : 22.03.2024

Ritesh Kumar Singh
R/o C-209, Lajpat Nagar-1, Delhi-110024

Complainant

Versus

Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: 309, 3rd floor, JMD Pacific
Square, Sector-15, Part-II, Gurugram-122001

Respondent

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

Gaurav Rawat (Advocate)
Sidharth Sejwal (AR)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1	Name and location of the project	"Riddhi Siddhi" at sector 99, Gurgaon, Haryana
2	Nature of the project	Affordable Group housing
3	Project area	6.19375 acres
4	DTCP license no.	86 of 2014 dated 09.08.2014 valid upto 08.08.2019
5	RERA Registered/ not registered	Registered vide no. 236 of 2017 dated 19.09.2017 valid upto 08.08.2019
6	Registration extension vide no.	Harera/GGM/REP/RC/236/2017/EXT/177/2019 dated 30.12.2019 valid upto 31.08.2020
7	Unit no.	202, 2 nd floor, Tower-T6 (page 79 of complaint)
8	Unit area admeasuring	487 sq. ft. (Carpet area) (page 79 of complaint)
9	Date of allotment	05.09.2015 (page 38 of complaint)
10	Date of builder buyer agreement	20.10.2015 (Page 77 of complaint)

11	Date of building plan approval	17.10.2014 (page 27 of reply)
12	Environmental clearance dated	22.01.2016 (page 33 of reply)
13	Possession Clause	<p>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</p> <p><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></p>
14	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016]
15	Offer for fit out of possession	24.06.2023 (page 110 of complaint)
16	Basic sale consideration	Rs.19,98,000/- (exclusive of taxes) (page 82 of complaint)

17	Amount paid by the complainant	Rs.21,36,836/- (as per receipts annexed at page 58-70 of complaint)
18	Occupation certificate	Not yet obtained
19	Offer of possession	Not offered

B. Facts of the complaint:

3. That relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs. 1,00,000/- dated 15.05.2015.
4. That the respondent confirms the booking of the said unit to the complainant vide allotment letter dated 05.09.2015 and allotted a unit bearing no. 202 in Block-T6, 2nd Floor, measuring 487 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.19,98,000/- which includes basic price, car parking charges and development charges and other specifications of the allotted unit.
5. That after repeated request and reminders by the complainant and after delay of more than 4 months respondent sent a letter to the complainant along with copy of buyer's agreement requesting to sign and return all the copy. And on 20.10.2015 an apartment buyer's agreement was executed between the complainant and respondent.
6. That as per clause 8.1 of the buyer's agreement the respondent had to deliver the possession within a period of 4 years from the date of grant of sanction of building plan or the date of receipt of all environment clearance. Hence the due date of possession is calculated from the date of building plan approval, as environment clearance i.e. 22.01.2016 and the

building plans was approved on 17.10.2014. Therefore, the due date of possession comes out to be 17.10.2018.

7. That as per the demands raised by the respondent, based on the payment plan, the complainant already paid a total sum of Rs. 21,31,836/- towards the said unit against total sale consideration of Rs. 19,98,000/-.
8. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of possession and also raised objections towards non-completion of the project.
9. That the respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the BBA.
10. That respondent sent letter of offer of possession for fit-outs dated 24.06.2023 to the complainant, mentioning that the construction of the said unit has been completed and the occupation certificate for said project has been applied. The unit is ready for the possession for the purpose of commencing the fit-outs and interior work and the same can be legitimately offered by the developer to you.
11. That along with the above said letter of offer of possession respondent raised several illegal demands on account of electricity connection and pre-paid meter charges, external electrification charges and HUDA water connection charges, Labour Cess, which was never the part of the payment plan provided along with allotment letter. Therefore, the total demand raised by the respondent in aforesaid mentioned letter is of Rs. 1,19,667/-.
12. That the complainant after receiving the aforesaid letter of offer of possession asked the respondent to provide the copy of the OC but respondent fail to provide the same.

13. That the respondent in respect of the said unit has not received the OC till date. Hence, respondent without getting the OC sent offer of possession letter which is bad in the eye of law and clearly shows the malafide intention on the part of the respondent to cheat and extract the money from the innocent allottees.
14. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainant:

15. The complainant sought following relief(s).
 - I. Direct the respondent to handover the physical possession of the unit with the amenities and specifications.
 - II. Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest from the due date of possession till the date of actual physical possession.
 - III. Direct the respondent to quash the offer of possession for fit out dated 24.06.2023 and issue fresh offer of possession after obtaining OC.
16. 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.

17. 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 obtained the approvals of the building plans vide approvals dated 17.10.2014 and also obtained the environmental clearance vide approval dated 22.01.2016. The respondent further obtained the registration under RERA Act and the respondent was granted the registration no. 236 of 2017. The said RERA registration was valid till 08.08.2019 which was extended by this Hon'ble Authority till 31.08.2020.
18. That the respondent no. 1 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 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 wave from January to May 2021 once again the construction activities came to a standstill. The covid 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 this Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid lockdown. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector

and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.

19. 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 in the delay in completing the project within the specified time period.
20. That the delivery of the flat 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 which is later, was incumbent upon the complainant making timely payments. The complainant, in the present matter, 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 herself had failed to perform his part of the 'contractual obligations' on time.
21. 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. 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 Riddhi Siddhi 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 in completion. The respondent had applied for grant of occupation certificate vide application dated 22.12.2022 and the same is expected soon.

22. 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 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.
23. 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 complainant.

E. Jurisdiction of the authority

24. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

25. 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

26. 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.

27. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objection raised by the respondent

F.1 Objections regarding force majeure.

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

G. Findings on the relief sought by the complainant.

G. I Direct the respondent to handover the physical possession of the unit with the amenities and specifications.

29. The respondent has not obtained the occupation certificate till date from the competent authority. The occupation certificate is granted by the competent authority to the promoter only after the completion of the building when the civic infrastructure is complete. The respondent-promoter is directed to handover the physical possession of the unit to

the allottee after obtaining occupation certificate from the competent authority.

G.II Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest from the due date of possession till the date of actual physical possession.

30. 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."*

31. 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.."

32. **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.

33. 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.
34. 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., 22.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
35. 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;"

36. 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.
37. 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 20.10.2015, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. Therefore, the due date of handing over possession was 22.01.2020. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 20.10.2015 executed between the parties. Further, no OC/part OC has been granted to the project.
38. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession

within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of valid offer of possession or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent to quash the offer of possession for fit out dated 24.06.2023 and issue fresh offer of possession after obtaining OC.

39. In the present complaint the respondent has offered the fit out possession vide letter dated 24.06.2023. The complainant has requested to quash the said letter dated 24.06.2023 and to issue fresh offer of possession after obtaining OC. It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;*
- ii. The subject unit should be in a habitable condition;*

iii. The possession should not be accompanied by unreasonable additional demands.


40. In the present matter, the respondent has offered the fit out possession of the allotted unit on 24.06.2023 i.e., without obtaining occupation certificate from the concerned department. Therefore, the said offer for fit out possession is not valid and respondent is directed to offer the possession of the unit after obtaining valid occupation certificate from the competent authority.

G. Directions of the authority

41. 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 legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC. So, the respondent is directed to complete the project and obtain occupation certificate and offer the possession of the subject unit to the complainant.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till actual handing over of possession or valid offer of possession after obtaining occupation certificate whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- iii. 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;
 - iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement or provided under Affordable Housing Policy.
 - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
42. Complaint stands disposed of.
 43. File be consigned to registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2024