

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

Complaint no. : 3702 of 2023
Date of complaint : 18.08.2023
Date of decision : 08.05.2024

1. Ravi Shanker Sharma,
2. Lalti Devi,
Both R/o: House No. 202,
Om Shaurya Niwas, Raja Ram Patil Nagar,
Lane 8, Kharadi, Pune-411014.

Complainants

Versus

Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: 309, 3rd Floor, JMD Pacific
Square, Sector-15, Part-II, Gurugram-122001.
Also at: 704-705, 7th Floor, JMD Pacific Square,
Sector-15, Part-II, Gurugram.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Gaurav Rawat (Advocate)
Sidharth Sejwal (AR)

**Complainants
Respondent**

**HARERA
GURUGRAM
ORDER**

1. The present complaint has been filed by the complainant/allottees 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 complainants, 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.	T7-203, 2 nd floor, Tower-T7 (page 41 of complaint)
8	Unit area admeasuring	487 sq. ft. (Carpet area) (page 41 of complaint)
9	Date of allotment	05.09.2015 (page 30 of complaint)
10	Date of builder buyer agreement	28.10.2015 (Page 40 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	<p>22.01.2020</p> <p>[Due date of possession has been calculated from the date of environmental clearance dated 22.01.2016, being later]</p>
15	Total sale consideration	<p>Rs.19,98,000/- (exclusive of taxes)</p> <p>(page 42 of complaint)</p>
16	Amount paid by the complainant	<p>Rs.21,19,532.93/- (including taxes)</p> <p>(as per final reminder letter dated 06.03.2023 on page 34 of complaint)</p>

17	Occupation certificate	Not yet obtained
18	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- I. That the complainants were allotted a unit bearing no. T7-0203, having carpet area measuring 487 sq. ft., block-T7, 2nd Floor in project of the respondent named "Riddhi Siddhi" at Sector 99, Gurugram, vide allotment letter dated 05.09.2015. Thereafter, an apartment buyer's agreement was executed between the parties on 28.10.2015 for a total sale consideration of Rs.19,98,000/-.
- II. 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.
- III. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs.21,19,532/- towards the said unit.
- IV. That the complainants went to the office of respondent several times and requested them to allow them to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during construction period.
- V. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the possession and was never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their

- office regularly as well as raising the matter to when will they deliver the project and why possession is going on at such a slow pace, but to no avail.
- VI. That the respondent has completely failed to honour its promises and has not provided the services as promised and agreed through the brochure, BA and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.
- VII. That the respondent has played a fraud upon the complainants and has cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the BBA executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- VIII. That the complainants sent various communications to the respondent raising various issues in relation to the said unit and asking the reason for delay in handing over the possession of the unit and timeline within which possession will be handed over to them and challenging the various illegal and one-sided demands letters sent to the complainants, but respondent till date has failed to provide any satisfactory response to them.
- IX. That respondent sent letter of offer of possession dated 24.06.2023 to the complainants, mentioning that the construction of the said unit has been completed. The unit is ready for the possession for the purpose of commencing the fit-outs and interior work. It is pertinent

to note here that along with the above said letter of offer of possession, the respondent raised several illegal demands on account of electricity connection and pre-paid meter charges, external electrification charges, labour cess etc which was never the part of the payment plan provided along with allotment letter.

- X. That offering possession by the respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession.
- XI. That the complainants, after receiving the aforesaid letter of offer of possession, asked the respondent to provide a copy of the OC, but the respondent failed to provide the same. It is pertinent to note here 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. Therefore, the aforesaid letter of possession dated 24.06.2023 is illegal and not valid as per the provisions of the RERA.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the respondent to handover possession of the unit and to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.
- II. Quash the offer of possession letter dated 24.06.2023 and direct the respondent to not to charge anything which has not been between the parties.



- III. Direct the respondent to not to force the complainants to sign any Indemnity cum Undertaking as precondition for signing the conveyance deed.
- IV. Direct the respondent to provide the exact lay out plan of the said unit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent vide reply dated 23.11.2023 contested the complaint on the following grounds: -
 - i. That this Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
 - ii. 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 vide approvals dated 17.10.2014 and also obtained the environmental clearance vide approval dated 22.01.2016.
 - iii. That 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. Therefore, the respondent



was entitled to complete and build the project till 31.08.2020. However, due to the outbreak of the pandemic Covid-19, the construction works were severely hampered which was beyond the control of the respondent company.

- iv. 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.
- v. 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.
- vi. 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.

vii. 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.

6. 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

7. 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

8. 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

9. 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.

10. 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.

F. Findings on the objections raised by the respondent.

F. I Objection regarding delay in making payments.

11. The objection raised by the respondent-builder regarding delay in payments by the complainants is rejected in view of the documents available on record which shows that the complainants have made a payment of Rs.21,19,532.93/- (including taxes) to the respondent as per demands raised by it and the same is evident from the demand letter dated 06.03.2023. However, no document qua delayed payment of any installment regarding the said unit was placed on record by the

respondent. Hence, keeping in view of the facts mentioned above, the plea advanced by the respondent in this regard stands rejected.

F.II Objections regarding force majeure.

12. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders/restrictions of the NGT and other authorities from time to time, outbreak of the Covid-19 pandemic etc. However, 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. Further, 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. 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 complainants.

G. I Direct the respondent to handover possession of the unit and to pay delayed possession charges at the prescribed interest per annum from the due date till actual delivery of the unit.

13. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every

month of delay, till the handing over of the possession, at such rate as may be prescribed."

14. Clause 8.1 of the buyer's agreement dated 28.10.2015 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.."

15. **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.

16. 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.

17. 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., 08.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
18. 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 to the allottees, 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. सत्यमेव जयते*
- 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;"*
19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made by both the parties, 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 28.10.2015, 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 complainants as per the terms and conditions of the buyer's agreement dated 28.10.2015 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 allottees.

21. 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 complainants after obtaining occupation certificate and so, it can be said that the complainants 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 complainants 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 date of possession i.e., 22.01.2020 till the expiry of 2 months from the date of valid offer of possession after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.

22. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 28.10.2015 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees 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 after obtaining occupation certificate from the competent authority 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.II Quash the offer of possession letter dated 24.06.2023 and direct the respondent to not to charge anything which has not been between the parties.

23. The complainants have submitted that the respondent vide offer of fit out possession letter dated 24.06.2023 offered fit-out possession of the unit to the complainants without even obtaining occupation certificate in respect of the unit in question. They further submitted that along with the above said letter of offer of possession, the respondent raised several illegal demands on account of electricity connection and pre-paid meter charges, external electrification charges, labour cess etc. from the complainants which were never part of the payment plan



provided to them along with allotment letter. The AR of the respondent during proceedings dated 08.05.2024 has stated at bar the building is complete and the OC has been applied for but not yet received from the competent authority. After considering the documents available on record as well as submissions made by the parties, it is determined that the occupation certificate for the project has not been received by the respondent till date. Therefore, said offer of fit-out possession letter dated 24.06.2023, cannot be held valid in the eyes of law and is hereby quashed. It is further directed that the respondent shall not charge anything from the complainants which is not the part of the buyer's agreement or provided under Affordable Housing Policy, 2013.

G.III Direct the respondent to not to force the complainants to sign any Indemnity cum Undertaking as precondition for signing the conveyance deed.

24. The respondent is directed to not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

G.IV Direct the respondent to provide the exact layout plan of the said unit.

25. As per section 19(1) of Act of 2016, the allottees shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority, or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide exact layout plan of the unit to the complainants within a period of 30 days.

H. Directions of the authority

26. 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 complainants against the paid-up amount at the prescribed rate i.e., 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 plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. The respondent is directed to handover possession of the unit/flat in question to the complainants in terms of the apartment buyer's agreement executed between the parties dated 28.10.2015 and the complainants are also obligated to take physical possession of the allotted unit under Section 19(10) of the Act, 2016.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The arrears of such interest accrued from 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottees 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.
 - 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.
- vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement or provided under Affordable Housing Policy, 2013.
 - vii. The respondent is directed to not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights.
 - viii. The respondent is directed to provide exact layout plan of the unit to the complainants within a period of 30 days in view of section 19(1) of Act of 2016.
27. Complaint stands disposed of.
28. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.05.2024

HARERA
GURUGRAM