

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

Date of Decision: 14.03.2024

NAME OF THE BUILDER		PIVOTAL INFRASTRUCTURE PRIVATE LIMITED	
PROJECT NAME		"RIDHI SIDHI"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2884/2023	Shalini Chauhan V/S Pivotal Infrastructure Private Limited	Shri K.K. Kohli Advocate Shri Siddharth Sejwal, Authorized Representative
2.	CR/3117/2023	Deepak Batra V/S Pivotal Infrastructure Private Limited	Shri K.K. Kohli Advocate Shri Siddharth Sejwal, Authorized Representative
3.	CR/3281/2023	Vijay Singh V/S Pivotal Infrastructure Private Limited	Shri K.K. Kohli Advocate Shri Siddharth Sejwal, Authorized Representative

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of afore-mentioned 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.

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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, "Ridhi Sidhi" (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	Pivotal Infrastructure Private Limited at "Ridhi Sidhi" situated in Sector- 99, Gurugram.		
Possession Clause: - 8. Handing over of 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 of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder."</i> <p style="text-align: center;">(Emphasis supplied)</p>			
Occupation certificate: - Not obtained			
Complaint No. & Case Title	CR/2884/2023 Shalini Chauhan V/S Pivotal Infrastructure Private Limited	CR/3117/2023 Deepak Batra V/S Pivotal Infrastructure Private Limited	CR/3281/2023 Vijay Singh V/S Pivotal Infrastructure Private Limited



Reply status	07.11.2023	19.12.2023	19.12.2023
Unit no.	101 [As per page no. 40 of the complaint]	303 [As per page no. 25 of the complaint]	606 [As per page no. 32 of the complaint]
Area admeasuring	487 sq. ft. (Carpet area) [As per page no. 42 of the complaint]	487 sq. ft. (Carpet area) [As per page no. 27 of the complaint]	487 sq. ft. (Carpet area) [As per page no. 32 of the complaint]
Date of apartment buyer's agreement	28.04.2016 [As per page no. 39 of the complaint]	13.01.2016 [As per page no. 24 of the complaint]	01.02.2016 [As per page no. 25 of the complaint]
Due date of handing over of possession	22.01.2020 (Note: Due date to be calculated 4 years from the date of environment clearance i.e., 22.01.2016, being later)	22.01.2020 (Note: Due date to be calculated 4 years from the date of environment clearance i.e., 22.01.2016, being later)	22.01.2020 (Note: Due date to be calculated 4 years from the date of environment clearance i.e., 22.01.2016, being later)
Offer of possession	Not offered	Not offered	Offer for fit-out possession (As per page no. 68 of the complaint)
Total Consideration / Total Amount paid by the complainant (s)	TSC: Rs.20,60,437/- (As per demand letter dated 08.05.2023 placed on record) AP: Rs.20,23,067/- (As per demand letter dated 08.05.2023 placed on record)	TSC: Rs.21,60,027/- (As demand letter dated 04.07.2023 on page no. 61 of the complaint) AP: Rs.20,35,256/- (As demand letter dated 04.07.2023 on page no. 62 of the complaint)	TSC: Rs.21,60,026/- (As demand letter dated 25.06.2023 on page no. 61 of the complaint) AP: Rs.20,60,437/- (As demand letter dated 25.06.2023 on page no. 61 of the complaint)
The complainants in the above complaint(s) have sought the following reliefs: 1. Direct the respondent to handover the legal and rightful possession of the apartment. 2. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.			
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)			

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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/2884/2023 titled as Shalini Chauhan V/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. Unit and project related details

7. 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. 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 up to 08.08.2019
5.	RERA Registered/ not	Registered vide no. 236 of 2017



	registered	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 up to 31.08.2020
7.	Unit no.	101, 1 st floor, Tower-T5 (As per page no. 40 of the complaint)
8.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 42 of the complaint)
9.	Date of allotment	05.09.2015 (As per page no. 32 of the complaint)
10.	Date of apartment buyer's agreement	28.04.2016 (As per page no. 39 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 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</i>

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		<p><i>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> <p><i>(As per page no. 49 of the complaint)</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, being later]
15.	Basic sale consideration	Rs.19,98,000/- (As per page no. 42 of the complaint)
16.	Total sale consideration	Rs.20,60,437/- (As per demand letter dated 08.05.2023 placed on record)
17.	Amount paid by the complainant	Rs.20,23,067/- (As per demand letter dated 08.05.2023 placed on record)
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 around 2017, the respondent company announced the launch for a residential apartments in the proposed affordable group housing colony known as "Riddhi Siddhi" in the project of "M/s Pivotal Infrastructure Pvt. Ltd.". The said project is being developed under the Affordable Housing Policy 2013, issued by the

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Government of Haryana vide notification dated 19.08.2013. It was a RERA registered project which gave the confidence to the buyer to invest her hard-earned money. The complainant while searching for a residential flat/accommodation was lured by the advertisements/brochures of the company to buy a flat/accommodation in their project at Village Kherki Majra Dhankot, Sector-99, Gurugram. The agents and officers of the respondent told the complainant about the moonshine reputation of the company and made huge presentations about the project mentioned above and assured that they have delivered several projects in the National Capital Region prior to this project. The respondent handed over one brochure to the complainant, which projected a very interesting landscaping of the project and went on to incite the complainant to part with her hard-earned money by way of making payments. The respondent claimed that they have taken all due approvals, sanctions and government permissions towards development and construction of the project and after representing through brochures about the facilities to be provided, the respondent managed to impress the complainant, who then decided to invest in purchasing the unit at the project of the respondent.

- II. That relying on various representations and assurances given by the respondent and on belief of such assurances, the complainant booked a unit by paying an amount of Rs.99,900/-.
- III. That the complainant received the provisional allotment letter towards the booking of the said unit bearing no. T5-101, located at 1st floor in tower/building no. T5, admeasuring 487 sq. ft. (carpet area) as well as one two-wheeler parking site for a total sale

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- consideration of Rs. 20,60,437/- (exclusive of any applicable taxes, cess, levies or assessment or EDC/IDC).
- IV. That a buyer's agreement was executed between the complainant and respondent on 28.04.2016. As per clause 8.1 of the buyer's agreement, the respondent had to handover the possession of the said unit 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. The date of approval of layout plans granted by department of Town & Country Planning on the basis of which the project has to be commenced on 17.10.2014. Hence, the due date of possession comes out to be 17.10.2018.
- V. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit paid a total sum of Rs.20,23,067/- towards the said unit against sale consideration of Rs.20,60,437/-.
- VI. The complainant has contacted the respondent on several occasions and was regularly in touch with the respondent, but the respondent was never able to give any satisfactory response regarding the status of the construction. The complainant visited the site multiple times and shocked to see that there was no progress regarding the construction of the commercial unit. Further, the respondent was never determined the date of delivery of the possession.
- VII. That the complainant after losing all the hope from the respondent having her dreams shattered of owning a flat & having basic necessary facilities in the project and also losing considerable



amount, is constrained to approach the Hon'ble Authority for redressal of her grievance.

- VIII. That the respondent has played a fraud upon the complainant and has cheated her 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 apartment buyer's agreement. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- IX. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent may be unique and innovative from the respondent's point of view but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either by not implementing the services/utilities as promised in the brochure or by not delivering the project in time.
- X. That the complainant after losing all the hope from the respondent having her dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the project and also losing considerable amount, are constrained to approach the Hon'ble Authority for redressal of her grievance. The present complaint is within the prescribed period of limitation.

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XI. That the complainant has not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- Direct the respondent to handover the legal and rightful possession of the apartment.
 - Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.

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:
- That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has 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.
 - 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

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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 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 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 the 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 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

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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 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 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 manifolds 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

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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 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.
- 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 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:

A 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 environment restrictions by Department of Environment and Climate Change and Haryana State Pollution Control Board, weather conditions in NCR region, increase in cost of construction material and shortage of labour, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

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- G.I Direct the respondent to handover the possession and to pay delayed possession charges at the prevailing rate of interest**
16. The above-mentioned relief(s) sought by the complainant is taken together being inter-connected.
17. In the present complaint, the complainant intend 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.

(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."

(Emphasis supplied)

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.

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20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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., 14.03.2024 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(z) 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 14.03.2024 stated that the construction is completed and an application for the grant of occupation certificate has already been made to the concerned authority and the possession will be offered after obtaining the requisite occupation certificate which is expected within 2 months.
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. The due date of handing over possession is 22.01.2020. 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 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 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.

27. During proceedings of the day dated 14.03.2024, the counsel for the complainant has brought to the notice of the Authority that the amount paid by the complainant to the respondent is Rs.20,23,067/- and placed a demand letter dated 08.05.2023 on record confirming the same. Thus, the amount paid by the complainant is considered as Rs.20,23,067/-.

A. 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):

- i. The respondent is directed to pay delay interest on the paid-up amount by the complainant 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.
- ii. 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

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- allottee(s) 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(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The 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 on obtaining of occupation certificate.
- iv. The respondent shall not charge anything from the complainant which is not the part of the apartment 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. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
31. Files be consigned to registry.

v.1 - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.03.2024