

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

Complaint no. : 4995 of 2023
Date of complaint : 26.10.2023
Date of decision : 21.08.2024

Sukant Sharma,
R/o: H. No. 464, Vishwas School,
Urban Estate 2, Hisar, Haryana-125001.

Complainant

Versus

M/s Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: Plot No.12, Sector-4,
Faridabad, Haryana-121004.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Rajan Kumar Hans (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 allottee 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.	303, 3 rd floor, Tower-T1 (page 27 of complaint)
8	Unit area admeasuring	487 sq. ft. (Carpet area) (page 27 of complaint)
9	Date of allotment	06.09.2015 (page 18 of complaint)
10	Date of builder buyer agreement	16.12.2015 (Page 26 of complaint)
11	Date of building plan approval	17.10.2014 (page 20 of reply)
12	Environmental clearance dated	22.01.2016 (page 26 of reply)
13	Possession Clause	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</i>



		<i>Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.</i>
14	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016]
15	Total sale consideration	Rs.19,98,000/- (exclusive of taxes) (page 29 of complaint)
16	Amount paid by the complainant	Rs.21,56,923.42/- (inclusive of taxes) (as per demand letter dated 24.06.2023 on page 56 of complaint)
17	Occupation certificate	Not yet obtained
18	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made following submissions in the complaint:

- I. That the complainant was allotted a flat bearing no. T1-0303, 3rd Floor admeasuring 487 sq. ft. as well as a two-wheeler parking in the project of the respondent named "Riddhi Siddhi" at Sector 99, Gurugram vide flat buyer's agreement dated 16.12.2015 under Affordable Housing Policy, 2013 for a total sale consideration of Rs.19,98,000/- against which the complainant has paid a sum of Rs.21,56,923/- in all.



- II. That as per Clause 8.1 of the agreement, the respondent had to complete the construction of the flat and handover the possession within 4 years from the date of commencement of the project.
- III. That in spite of the complainant having paid 100% of the actual amount of flat, the respondent has failed to deliver the possession of flat.
- IV. That as per section 18 of the Act, 2016, the promoter is liable to refund the amount or pay interest at the prescribed rate of interest and compensation to the allottees of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- V. That there is a deficiency of service on the part of the respondent and as such it is liable to be punished and compensate the complainant.

C. Relief sought by the complainant:

4. The complainant has 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 of possession till actual delivery of the 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 21.02.2024 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 parties.



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 Objections regarding force majeure.

11. 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 complainant.

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 of possession till actual delivery of the unit.

12. 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."

13. Clause 8.1 of the buyer's agreement dated 16.12.2015 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.."

14. **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.

15. 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.

16. 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., 21.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
17. 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 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;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to it in case of delay possession charges.
19. 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 16.12.2015, 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 16.12.2015 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.

20. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 16.12.2015 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

21. 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/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- 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 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.
- iii. The respondent/promoter is directed to handover possession of the unit/flat in question to the complainant in terms of Section 17 of the Act, 2016 and the complainant is also obligated to take physical possession of the allotted unit under Section 19(10) of the Act, 2016.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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.
- vi. 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, 2013.



HARERA
GURUGRAM

Complaint No. 4995 of 2023

22. Complaint stands disposed of.
23. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.08.2024



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