

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

Complaint no. : 25 of 2023
Date of complaint : 04.01.2023
Order Reserve On : 10.01.2025
Order Pronounced On: 07.03.2025

Sushant Madhgoria

R/o: 4BH-15, Moni Lake Marg, Jawahar Nagar,
Jaipur – 302004, Rajasthan.

Complainant

Versus

Pivotal Infrastructure Pvt. Ltd.

Office at: 309, 3rd floor, JMD Pacific Square,
Sector-15, Part-II, Gurugram-122001, Haryana.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Aviral Goyal (Advocate)
Shri Siddharth 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, Gurugram, 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.	T-5-506, 5 th floor, Tower-T5 (page no. 63 of complaint)
8	Unit area admeasuring	487 sq. ft. (Carpet area) (page no. 63 of complaint)
9	Date of allotment	05.09.2015 (page no. 63 of complaint)
10	Date of builder buyer agreement	Not executed
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	1.(iv) <i>All such projects shall be required to be necessarily completed within 4 years from the date approval of building plans or grant of environmental clearances, whichever is later, this date shall be referred to as the "date of commencement of project" for the purpose of this policy.</i> <i>[as per affordable housing policy 2013]</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	Basic sale consideration	Rs.19,98,000/- (as per allotment letter on page 64 of complaint)
16	Amount paid by the complainant	Rs.20,10,517/- (exclusive of Rs.96797.33/- paid towards taxes)= Rs. 21,07,314/- (as per demand letter dated 30.05.2019 at page 77 of complaint) Rs. 21,40,297/- (As alleged by complainant)
17	Occupation certificate	Not yet obtained
18	Offer of possession	Not offered
19	Cancellation letter	04.10.2016, 23.09.2017 (page no. 120-121 of reply)

B. Facts of the complaint:

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

- I. That the respondent issued an allotment letter dated 05.09.2015 and allotted a unit bearing no. T5-0506 on 5th floor in tower no. T5 admeasuring 487 sq. ft. along with allotment of one two wheeler parking site to the complainant for a total consideration of Rs, 19,98,000/-. As per the demand of the respondent, the complainant made a payment of Rs. 5,00,000/- against the total sale consideration towards the allotment of the subject unit in the said project.
- II. That as per the terms and conditions governing the said application form, it was categorically prescribed under clause 6 sub clause 6.1 of the application form that the respondent shall endeavor to deliver the possession of the unit in 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.

- III. That in furtherance of the application form and allotment letter, the complainant on several occasions approached the respondent for execution of the agreement to sale. The complainant called numerous times to the respondent which went unheard. The respondent illegally started raising unlawful demands of more than 10% of the total sale consideration from the complainant even though miserably failing in executing the agreement to sell and the said act of the respondent is a clear violation of Section 13 of the Act.
- IV. That the respondent without executing the agreement to sell as per the provision of the Act, the respondent sent numerous illegal demand letters to the complainant and threatened to cancel the unit in question if the demands were not paid timely. However, the complainant on account of the threats given by the respondent made payments to all the demands raised by the respondent and has paid total consideration of the unit along with the illegally charged interest by the respondent in the year 2019 itself i.e., an amount of Rs. 21,40,297/-.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).
- I. Direct the respondent to handover the possession of the unit to the complainant after obtaining occupation certificate.
 - II. Direct the respondent to pay interest from deposits till possession of the unit is given to the complainant.
 - III. Penalty be imposed on the respondent for violation of section 13 by accepting amount more than 10% of the total consideration without first entering into the agreement.

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 19.05.2023 contested the complaint on the following grounds: -
- I. That the present complaint in the present form is not maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.
 - II. That this Hon'ble Authority does not have the jurisdiction to adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
 - III. 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. The respondent further obtained the registration under the Act and the respondent was granted the registration no. 236 of 2017.

- IV. That 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 the difficulties in completing the project by Real Estate Developers, this Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020.
- V. 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.
- VI. That the respondent issued various reminders and final notice against the due instalments to the complainant but the complainant has failed to make timely payments of the due instalments and thereafter the respondent issued letter of cancellation on 04.10.2016 and 23.09.2017 after the publication of a public notice in the 'Tribune' and 'Hindustan Hindi' which was published by the respondent seeking the payment of the due instalments from the complainant.
- VII. That there are total outstanding dues of Rs. 7,06,40,000/- approx. payable by the allottees of the project Riddhi Siddhi, Sector - 99, Gurugram. The delay in recovery of the aforesaid sum from the

allottees is also aggravating the financial distress situation and has seriously affected the cash flows of the respondent company and granting of interest at the prescribed rate would only have a cascading effect on the development and construction works of the project and in obtaining all other relevant approvals which would ultimately affect the completion of the project and obtain occupation certificate from DTCP.

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 in its reply has raised an objection that the Authority has no jurisdiction to adjudicate the matter. The authority has complete territorial and 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 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 relief sought by the complainant.

F.I Direct the respondent to handover the possession of the unit to the complainant after obtaining occupation certificate.

F.II. Direct the respondent to pay interest from deposits till possession of the unit is given to the complainant.

11. The complainant submitted an application for participation in the draw for the allotment of apartments in the project being developed by the respondent company, namely Riddhi Siddhi, located at Sector 99, Gurugram. In response, the complainant was allotted unit bearing no. 506 on the 5th floor of tower T5, with a carpet area of 487 sq. ft. vide allotment letter dated 05.09.2015 for a total sale consideration of Rs. 19,98,000/- against which he has paid a sum of Rs. 21,40,297/- to the respondent in all till date. However, the respondent has failed to

execute the apartment buyer agreement/agreement to sell with the complainant despite taking more than 100% of the payment in respect of the subject apartment. The complainant further submitted that even after making more than full payment, the respondent has cancelled its allotment. Hence, complainant is hereby seeking possession along with delay possession charges.

12. The plea of the respondent is otherwise and stated that the project is regulated as per the Affordable Housing Policy, 2013 as per which the possession of the unit was to handed over within 4 years from the date of grant of building approvals or from date of grant of environment clearance whichever is later. Moreover, the complainant is under obligation to make timely payments and it has failed to make payments therefore, the respondent had issued reminders and final notice on 04.10.2016 and 23.09.2017 and subsequently published in newspaper the list of defaulters before cancellation as mandated by Affordable Housing Policy 2013. Now, the question before the authority is whether this cancellation is valid or not.
13. After considering the documents available on record as well as submissions made by the parties, the Authority observes that the said project is regulated as per the Affordable Housing Policy, 2013. Further, clause 5(iii)(i) of the Affordable Housing Policy, 2013 is relevant in the case of cancellation by the respondent promoter. The said clause is reproduced below for ready reference:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. **If the allottee still defaults in making the payment, the list of such defaulters may be**

published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

14. The Authority observes that clause 5(iii)(i) of the Affordable Housing Policy, 2013 provides that if an applicant fails to remit the installment within the prescribed time period, a reminder may be issued to the applicant, requiring payment of the outstanding installment within fifteen (15) days from the date of issuance of such notice. If the allottee fails to make the payment within the specified period, the list of defaulters may then be published in a regional Hindi newspaper. If the allottee continues to default, the allotment may be cancelled thereafter.
15. In the instant case, the complainant has paid an amount of Rs. 21,40,297/- out of the sale consideration of Rs. 19,98,000/- i.e., already more than agreed sale consideration and even without executing apartment buyer agreement. Even no demand letter was ever issued by the respondent for which the reminders were sent on 04.10.2016 and 23.09.2017 and the publication of the defaulters list in the newspaper was on 23.09.2017. However, the respondent states that it cancelled the unit on the same date i.e., 23.09.2017. The Authority notes that the complainant has already made full payment, and no demand letter was ever issued by the respondent, which would have justified the sending of reminders or the publication made in the newspaper. Therefore, the reminders and letters dated 04.10.2016 and 23.09.2017 are hereby deemed invalid. Moreover, the Affordable

Housing Policy, 2013 clearly states that *"within 15 days from the date of publication of such notice failing which allotment may be cancelled."* Therefore, if the complainant fails to make payment within 15 days after publication of notice then the respondent promoter may cancel the allotment of the allottee. In the present case, 15 days' time period after the publication was not granted to the complainant. After noting these lapses on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. The said cancellation is bad in law and is hereby set aside and the subject unit is ordered to be restored to its original position in favour of the complainant.

16. 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."

12. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

13. **Due date of handing over of possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained building plan approval and environment clearance in respect of the said project on 17.10.2014 and 22.01.2016 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later which comes out to be 22.01.2020.
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., 07.03.2025 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(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:

"(z) '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 delayed 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 him in case of delay possession charges.
17. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject unit was to be delivered within stipulated time i.e., by 22.01.2020. However, till date

no occupation certificate has been received by respondent and neither possession has been handed over to the allottee till date.

18. The complainant is also seeking relief of possession. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. The respondent is directed to offer the possession of the allotted unit in strict compliance of section 11(4)(b) of the Act after obtaining the completion certificate or occupation certificate from the relevant competent authority. Further, the complainant is also directed to take the possession of the allotted unit in compliance of obligation conferred upon them under section 19(10) of Act within two months of the occupation certificate after payment of such outstanding dues.
19. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer possession of the allotted unit to the complainant. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.
20. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the 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.

21. The respondent-promoter is further directed to enter into a registered agreement for sale w.r.t. the apartment/unit in question with the complainant within a period of one month. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights in respect of the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the allotment letter dated 05.09.2015 in the said project to the complainant.

G. Directions of the authority

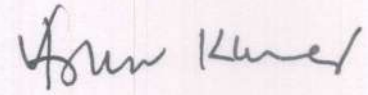
22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The cancellation is set aside. The respondent is directed to restore the subject unit to its original position in favour of the complainant.
 - ii. The respondent is further directed to enter into a registered agreement for sale w.r.t the apartment/unit in question with the complainant within a period of one month. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights in respect of the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the allotment letter dated 05.09.2015 in the said project to the complainant.
 - iii. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion certificate or



- occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.
- iv. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from the 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.
- v. The respondent is directed to supply a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days to the complainant.
- vi. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- viii. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.
- ix. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint stands disposed of.
24. File be consigned to registry.

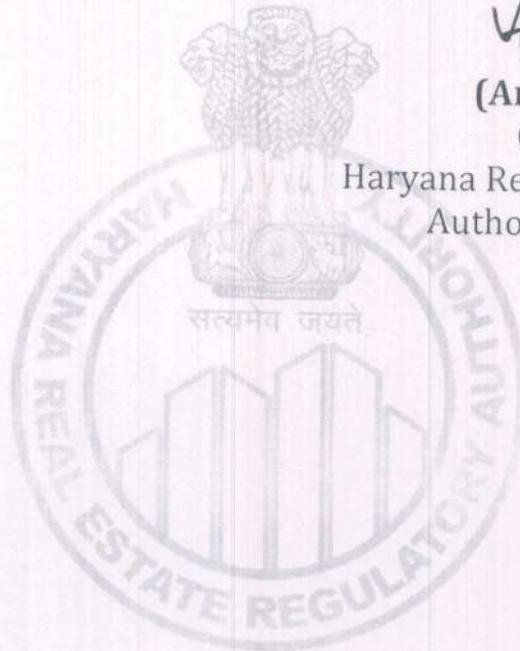


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 07.03.2025



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