



HARERA
GURUGRAM

Complaint No. 516 of 2024

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

Complaint no. : 516 of 2024
Date of complaint : 12.02.2024
Date of order : 09.04.2025

Vineet Hooda,
R/o: - H. No. 202, Meditech CGHS,
Plot No. GH-59, Sector-56, Gurugram-122011.

Complainant

Versus

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

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sukhbir Yadav (Advocate)
Siddharth Sejwal (AR)

Complainant
Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder 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	"99 Marina Bay" Commercial Space/Shops situated in "Riddhi Siddhi" Project 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.	Shop no. and area	53, 237 sq.ft. (Super area) (page 34 of complaint) Change in unit no. and area- 57, 240.22 sq.ft. (page 53 of complaint)
8.	Date of allotment	Not on record
9.	Date of agreement	29.09.2016 (Page 34 of complaint)
10.	Possession Clause	Not Provided
11.	Due date of possession	29.09.2019 <i>[Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]</i>
12.	Total sale consideration	Rs.27,01,800/- (exclusive of EDC/IDC and applicable taxes) (page 35-36 of complaint)
13.	Amount paid by the complainant	Rs.29,01,057/- (as per Annexure R-10 at page 44 of reply)

14.	Occupation certificate	Not yet obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That in August 2016, the complainant received a marketing call from the office of the respondent, who represented himself as the sales manager of the respondent and marketed certain commercial shops named "99 Marina Bay" in the affordable housing project by the name "Riddhi Siddhi" for booking of a commercial shop situated at Sector - 99, Gurugram. The respondent allured the complainant with the proposed specifications and assured that the committed assured return will be paid by the respondent to the complainant from the period commencing on the completion of 25% by the complainant after the payment of the booking amount and till the date of the offer of possession.
- II. That believing in the representations and assurances of respondent, the complainant booked a commercial unit/shop bearing no. 53 (later changed to Shop No. 57) on the Ground Floor having a super area of 237 sq. ft. in the said commercial project situated at Sector -99, Gurugram on 10.08.2016 under "Super Flexi Payment Plan" and made a payment of Rs. 50,000/- through cheque bearing no. 040216 dated 10.08.2016 against the booking amount.
- III. That it is crucial to note here that the respondent party did not send any allotment letter with respect to the commercial shop of the complainant and on 29.09.2016, an "agreement for purchase a shop in marina bay project" was executed between the parties regarding the said allotment. As per the said agreement, the respondent is bound to pay an assured return to the complainant till the offer of possession as

per the super flexi payment benefit plan which is annexed in the said agreement. It is further pertinent to mention here that the due date of possession for the complainant's shop is nowhere mentioned in the said agreement even no possession clause can be seen in the same. Furthermore, the respondent did not mention any clause pertaining to the delayed possession charges to be paid on account of the delay in handing over of possession. Moreover, when the complainant asked for the addition of some clauses, the respondent party said that no changes or alterations could be made in the said agreement, therefore, you have to sign it as it is, hence the complainant had to sign the said arbitrary agreement in absence of any other requisite documents for his commercial shop/ unit.

- IV. That the complainant kept on making all the payments against the installments for his respective commercial shop following all the demands raised by the respondent and has deposited a sum of Rs.29,01,057/- against the total sale consideration of Rs.27,01,800/- which is more than 100% of the total sale consideration.
- V. That despite receiving funds more than 100% of the sale consideration, the respondent sent a demand letter dated 21.01.2020 and 20.01.2020 and raised a demand of Rs.74,300/-.
- VI. That as per the agreement dated 29.09.2016, the respondent is obligated to pay the assured return to the complainant till the offer of possession, however, the respondent paid the assured return to the complainant till April 2022 and thereafter stopped the payment of the assured return.
- VII. That, since April 2022, the complainant has been regularly requesting the respondent to pay the committed assured return and to give possession of the complainant's shop, however, despite several visits and requests made by the complainant, the respondent did not pay the

committed assured returns from April 2022 and did not give the possession of his unit.

- VIII. That on 18.09.2023, the complainant sent a grievance mail to the respondent and asked to pay the assured return which has not been paid after April 2022, however, he did not get any revert from the respondent. Thereafter, on 16.10.2023, the complainant after being ignored by the respondent again sent an email to the respondent and asked for the withdrawal of all illegal and unreasonable charges such as labour cess, upgradation electricity charges, etc., however, as always, the said mail was also went unresolved.
- IX. That on 06.10.2023, the respondent out of the blue issued the offer of fit-out possession in the name of the complainant. It is important to note here that the respondent has changed the shop of the complainant from shop no. 53 to shop no. 57 in the said letter. Moreover, the said offer of fit-out possession is not a valid offer of possession and, also the said fit-out possession letter was issued without obtaining the occupancy certificate. Furthermore, the respondent increased the area of the complainant's shop without any prior intimation which increased the cost of the said shop. The respondent has also levied various illegal and unreasonable charges in the said letter under the head such as labour cess, upgradation electricity charges, charges on account of enhanced area and legal charges, etc. which are not acceptable and payable by the complainant. Hence, the said offer of fit-out possession is illegal and merely a piece of paper and the same is not acceptable in any manner, thus, the respondent party is required to withdraw the same and to issue a valid offer of possession.
- X. That after receiving the above-stated offer of fit-out possession, when the complainant made a visit to the project site then he was shocked to find out that the balcony of the unit/flat situated on 1st Floor or above

the shop of the complainant is included in the structure of the complainant's shop which is reducing the area and height of the complainant's shop. It is apposite to note here that as per the building plans provided to the complainant by the respondent, do not show any balcony structure included in the complainant's shop. It is not incorrect to say that the respondent has been playing fraudulent games since the beginning and never stopped from deceiving the complainant.

- XI. That since December 2023, the complainant has been following up with the builder through emails as well as telephonic conversations and making efforts to get his grievances resolved, however, the respondent never paid any heed to the requests of the complainant.
- XII. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to Adjudicating Officer for compensation. Also, the complainant reserves the right to get compensation on account of the structural defect of the upper flat's balcony which is coming into the shop of the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay pending assured return i.e. Rs.22,515/- p.m as per agreement dated 29.09.2016 from April 2022 till valid offer of possession.
 - Direct the respondent to handover physical possession of the shop and to execute conveyance deed in his favour.
 - Direct the respondent to get OC from competent authority and to give justification for increase in area of the shop.
 - Restrain the respondent from demanding labour cess, upgradation electricity charges and interest.
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 contested the complaint by way of reply dated 12.11.2024 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 and complainant execute the agreement on 29.09.2016 and in the said agreement, the respondent specifically mentioned that they developed the commercial shop bearing no. 53 (later changed to shop no. 57), having super area of approx. 237 sq. ft. named as "99 Marina Bay" in the affordable group housing project by the name of "Riddhi Siddhi" situated on land admeasuring 6.19375 acers in the revenue village of Kherki Majra, Dhankot, Sector - 99, Tehsil and District Gurugram, Haryana.
- iv. That the respondent as per the agreement terms pay the enhanced monthly flexi payment to complainant from September 2016 to March 2022 amounting to Rs.11,63,757/- including TDS.
- v. That it is clearly evident from the aforesaid approvals granted by the various authorities, that the respondent was entitled to complete and build the project till 22.01.2020. 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, this Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020.

- vi. 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.
- vii. 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.
- viii. 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.



ix. 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.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

8. The respondent has raised a preliminary submission/objection that 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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.

11. 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 force majeure conditions**

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. changed the shop no. from Shop no. 53 to 57 and also increased the area from 237 sq.ft. to 240 sq.ft.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to get OC from competent authority and to give justification for increase in area of the shop.

G.II Restrain the respondent from demanding labour cess, upgradation electricity charges and interest.

13. The complainant was allotted a shop bearing no. 53, Ground Floor admeasuring super area of 237 sq.ft. (later changed to shop no. 57 measuring 240.22 sq.ft. vide offer of fit-out possession letter dated 06.10.2023) in the commercial project of the respondent named "99 Marina Bay" situated at Sector-99, Gurugram vide buyer's agreement dated 29.09.2016 for a total sale consideration of Rs.27,01,800/- against which the complainant has paid a sum of Rs.29,01,057/- till date. The occupation/completion certificate for the project in question has not been obtained by the respondent till date. However, the respondent vide offer for fit-out possession letter dated 06.10.2023, intimated the complainant that the shop no. and super area has been revised and also offered fit-out possession of the shop, subject to payment of amount demanded by it under various heads without giving any justification/clarification regarding it in the said letter and even prior to obtaining of occupation/completion certificate, which cannot be held valid in the eyes of law and is hereby set aside.
14. The complainant is seeking justification for increase in area of the shop and restraining the respondent from demanding labour cess, upgradation electricity charges and interest. The Authority observes that as per Section 11(4)(b) of the Act of 2016, the respondent/promoter is obligated to obtain the completion certificate or the occupation certificate, or both, as applicable, from the competent authority as per law and to make it available to the allottees individually or to the association of allottees as the case may be. Further, as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other

information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent/promoter is directed to provide documents and details w.r.t justification for increase in area of the shop in question to the complainant within a period of 1 month from the date of this order.

- ❖ **Labour Cess:** - The issue of labour cess has already been dealt with by the authority in complaint bearing no.962 of 2019 titled *Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited* wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent-builder who is solely responsible for disbursement of the said amount.
- ❖ **Upgradation Electricity charges:** - The authority observes that the amount demanded under the afore-said head cannot be held valid as it was neither the part of agreement dated 29.09.2016, nor it was agreed between the parties. Thus, the respondent shall not charge anything from the complainant which is not part of the agreement or agreed between the parties.
- ❖ **Interest:** - Section 19(6) & 19(7) of the Act, 2016 provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee. Accordingly, in case of default, the respondent can charge interest on the delayed payments at the prescribed rate i.e., 11.10%.

G.III Direct the respondent to pay pending assured return i.e. Rs.22,515/- p.m as per agreement dated 29.09.2016 from April 2022 till valid offer of possession.

15. The complainant in the present complaint is seeking payment of pending assured return as per the terms of the agreement dated 29.09.2016. The complainant has submitted that the respondent was obligated to pay committed assured return to the complainant from the period commencing on the completion of 25% payment of the booking amount i.e. 13.09.2016 till the date of the offer of possession. However, the respondent paid the assured return to the complainant till April 2022 and thereafter stopped the payment of the assured return. The respondent has contended that the authority does not have jurisdiction to adjudicate the present complaint.
16. The authority observes that money was taken by the promoter as deposit in advance against allotment of immovable property in favour of the allottee and in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint. Further, if the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. Thus, the promoter is liable to pay that amount as agreed upon.
17. In the present complaint, the assured return was payable as per clause B of agreement dated 29.09.2016, which is reproduced below for the ready reference:

4. *"Super Flexi Payment Benefit amount shall be payable for the period commencing on the completion of 25% by the 2nd party after the payment of the Booking Amount and till the date the letter offering possession of the Unit (the 'Possession Letter') is issued to the Second Party subject to all subsequent payments paid timely by the second party as per the plan('THE PLAN'). The Company shall issue the Possession Letter only after having received the*

Occupation Certificate (OC) from the competent authority in relation to the Commercial Complex."

Further, the Super Flexi Payment Benefit Plan (The Plan) as well as demand letter dated 03.08.2019 provides that 25% of the booking amount was paid by the complainant-allottee on 13.09.2016. Thus, the agreed assured return was payable w.e.f. 13.09.2019, till the letter for offer of possession is issued to the complainant.

18. In light of the reasons mentioned above, the authority is of the view that as per the agreement dated 29.09.2016, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in agreement dated 29.09.2016. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is directed to pay assured return to the complainant at the agreed rate from the date i.e. 13.09.2016 till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate as per the agreement dated 29.09.2016, after deducting the amount already paid on account of assured return to the complainant.

G.IV Direct the respondent to handover physical possession of the shop and to execute conveyance deed in his favour.

19. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the allottee. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, as per record, occupation/completion certificate for the project in question has not been obtained by the respondent from the competent authority till date. In view of the above, the respondent is directed to handover possession of the shop and execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months

(inadvertently mentioned as 60 days in proceedings dated 09.04.2025) after obtaining occupation/completion certificate from the competent authority.

F. Directions of the authority:

20. 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 assured return to the complainant at the agreed rate from the date i.e. 13.09.2016 till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate as per the agreement dated 29.09.2016, after deducting the amount already paid on account of assured return to the complainant.
- ii. The respondent is directed to pay arrears of accrued assured return as per agreement dated 29.09.2016 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.
- iii. The respondent/promoter shall handover possession of the shop in question and execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation/completion certificate from the competent authority.
- iv. The respondent/promoter is directed to provide documents and details w.r.t justification for increase in area of the shop in question to the complainant within a period of 1 month from the date of this order.
- v. The respondent/promoter shall not charge labour cess and upgradation electricity charges from the complainant-allottee.



HARERA
GURUGRAM

Complaint No. 516 of 2024

- i. The respondent shall not charge anything from the complainant which is not the part of the agreement dated 29.09.2016.
21. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 09.04.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



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