

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

Complaint no. : 2041 of 2024
Date of complaint : 06.05.2024
Date of order : 21.05.2025

Sanitha,
R/o: H. No. 34, Bindapur, Uttam Nagar,
New Delhi-110059.

Complainant

Versus

M/s Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: 309, 3rd Floor, JMD Pacific
Square, Sector-15, Part-II, Gurugram-122007.
Also at: 2nd Floor, Om Shubham Tower,
Neelam -Bata Road, NIT, Faridabad-121001.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Ravinder Singh Kinha (Advocate)
Kirandeep KAur (Advocate)

**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.	T-8-506, Tower-T8 (page 49 of complaint)
8	Unit area admeasuring	487 sq. ft. (page 49 of complaint)
9	Date of allotment	Not on record
10	Date of builder buyer agreement	Not executed as per record
11	Date of building plan approval	17.10.2014 (page 17 of reply)
12	Environmental clearance dated	22.01.2016 (page 23 of reply)
13	Possession clause in Affordable Housing Policy, 2013	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.
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	Total sale consideration	Rs.19,98,000/- (exclusive of taxes) (page 20 of complaint)
16	Amount paid by the complainant	Rs.21,26,652/- (inclusive of taxes) (as per demand letter dated 06.03.2023 on page 49 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 being allured & impressed by the advertisement shown by the respondent through various mode of communication including but not limited to newspapers and pamphlets, complainant applied for allotment of a residential unit in project "Riddhi Siddhi" to be developed by the respondent in terms of the Licence No. 86 dated 09.08.2014 on the land situated within the revenue estate of Village Kherki Majra Dhankot, Sector 99, Tehsil and District Gurgaon, Haryana.
 - II. That the said project was to be developed under the Affordable Housing Policy, 2013, issued by the Government of Haryana vide Town & Country Planning Department's notification dated 19.08.2013.
 - III. That the complainant vide application no. 1721 dated 15.05.2015 deposited a sum of Rs.1,00,000/- with the respondent alongwith application form and other requisite documents.

- IV. That in terms of draw of lots held by the competent authority, the complainant was allotted a 2 BHK apartment bearing no. 506, 5th Floor, Tower No. T-8, having carpet area of 487 sq. ft. (approx.) alongwith one two-wheeler parking site in the said project for a total sale consideration of Rs.19,98,000/-. Thereafter the respondent sent 02 copies of apartment buyer's agreement which after signatures of the complainant were returned to the respondent for its due execution. However, the respondent has failed to even deliver the duly executed copy of the buyer's agreement.
- V. That in terms of the clause 8.1 of the buyer's agreement, the respondent was required to handover the possession of the said unit/apartment complete in all respect within 04 years from the date of sanction of building plan or the receipt of environment clearances whichever is later.
- VI. That pursuant to the terms and conditions of the agreement, the complainant paid the due instalments on time and if delayed, with interest also. The complainant till date has paid an amount of Rs.21,26,652/- and the same is evident from the letter/final reminder dated 06.03.2023.
- VII. That whenever the complainant visited the marketing office of the respondent and the site, she was sent back on verbal assurance that possession of the apartment would be offered very soon. However, till date neither the possession has been offered and as to the best of the knowledge of the complainant even the occupation certificate has not yet been received from the competent authority.
- VIII. That even the structure which has been developed by the respondent is not as per the original building plan and as per the plans printed on the apartment buyer's agreement & in other

advertising material, which shows that the respondent had illegally, unauthorizedly, arbitrarily and without taking consent of the allottees have altered the building plan and such the respondent is also liable to be penalized for the contravention of RERA Act and rules, as applicable to the State of Haryana.

- IX. That the complainant several times met the officials of the respondent and asked for payment of compensation for the period of delay in offering possession. However, the respondent's officials flatly refused to pay any compensation qua delay in possession stating existence of force majeure clauses in the buyer agreement and said that whenever they will receive the occupation certificate, they will hand over the possession of the apartment allotted to 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 delay possession charges at the prescribed rate.
 - II. Conducting an inquiry against the respondent for illegally changing the building plans without obtaining consent of complainant and other allottees.
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 25.09.2024 has 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 was entitled to complete the project till 22.01.2020. However, due to 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. Further, the construction of the project ha been stopped due to outbreak of Covid-19 pandemic.
- iv. 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.

- v. 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.
 - vi. 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-promoter 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 delay possession charges at the prescribed interest per rate.

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 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licenced 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."



14. **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. Thus, the due date of possession is being calculated from the date of environmental clearance, being later. Therefore, the due date of possession comes out to be 22.01.2020.

15. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the Rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.



17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. The definition of term 'interest' as defined under section 2(z a) 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;"*
19. 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 her in case of delay possession charges.
20. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of Clause 1(iv) of the Affordable Housing Policy, 2013, 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 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. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

21. 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.

G.II Conducting an inquiry against the respondent for illegally changing the building plans without obtaining consent of complainant and other allottees.

22. The complainant has submitted that the structure which has been developed by the respondent is not as per the original building plan and as per the plans printed on the apartment buyer's agreement and in other advertising material, which shows that the respondent had illegally, unauthorizedly, arbitrarily and without taking consent of the allottees have altered the building plan. The complainant in support of his argument has placed on record detailed report forwarded by DTP, Gurugram to DGTCP, Haryana dated 27.06.2023, for grant of Occupation Certificate for the project in question vide which it is

determined that major changes have been made by the promoter during course of construction i.e. 17870.4 Sq.m. It is also evident from the said report that Tower-9 of the project has been rotated 90 degrees anticlockwise, 2 floors has been added on 13th & 14th floor, commercial building has been revised within the permissible FAR limit and the tower in question i.e. Tower 8 has been shifted towards South and accordingly area has been considered into major changes. The Authority observes that Section 14(2)(i) provides that the promoter shall not make any additions and alteration in the sanctioned plan, layout plans and specifications and the nature of fixtures, fitting and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken without previous consent of the person who agree to take one or more of the said apartment, plot or building, as the case may be, in the proposed project. It is further observed that no documentary proof regarding taking prior approval from the allottees for making any alteration or addition in sanctioned plans, layout plans and specifications etc. is available on record. Thus, the above said actions of the respondent/promoter are in violation of Section 14 of the Act of 2016. In view of the above, the planning branch of the authority is directed to initiate necessary action against the respondent/promoter for violation of Section 14 of the Act.

H. Directions of the authority

23. 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.
 - vii. The planning branch of the authority is directed to initiate necessary action against the respondent for violation of Section 14 of the Act of 2016.
24. Complaint stands disposed of.
25. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.05.2025