

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

Complaint no. : 3124 of 2023
Date of complaint : 25.07.2023
Order Reserve On : 28.03.2025
Order Pronounced On: 23.05.2025

1. Sudhir Kumar
2. Poonam

Both R/o: RZ-19-C/10A, Gali no. 3, Main
Sagarpur, Delhi.

Complainants

Versus

Pivotal Infrastructure Pvt. Ltd.

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

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Hemant Phogat (Advocate)
Shri Siddharth Sejwal (AR)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/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

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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 complainants, 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.	35 (page 19 of complaint)
8	Unit area admeasuring	164 sq. ft. (page 19 of complaint)
9	Date of agreement between the complainants and the respondent	04.02.2016 (page 17 of complaint)

12



10	Super flexi payment plan/monthly benefit	Assured return is based upon making payments Detailed at page 22 of complaint
11	Approval of building plans	17.10.2014 (page no. 17 of reply)
12	Date of environment clearance	22.01.2016 (page no. 23 of reply)
13	Possession clause as per Affordable Housing Policy, 2013	Clause 1 (iv) <i>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.</i> (As per affordable housing policy)
14	Due date of possession	22.01.2020 (calculated from date of environment clearance as it is later)
15	Basic sale consideration	Rs.19,68,000/- (page 19 of complaint)
16	Amount paid by the complainants	Rs. 20,66,884/- (as alleged by complainants at page 13 of complaint)
17	Assured return paid by the respondent	Rs. 7,18,954/- from 30.11.2018 to 15.09.2022 (page no. 37-38 of reply)

12



18	Occupation certificate	Not yet obtained
19	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- I. That after going through the advertisement published by respondent in the newspapers and as per the brochure /prospectus provided by it, the complainants booked a commercial shop bearing no. 35 having its super area 164 sq. ft. named as "99 Marina Bay" in the upcoming affordable group housing project of the respondent by the name of "Riddhi Siddhi" situated in the revenue village of Kherki Majra, Dhankot, Sector- 99, Tehsil & District, Gurugram, Haryana for a basic sale consideration of Rs.19,68,000/-, and they had paid a sum of Rs. 20,66,884/-.
- II. That the respondent is in right to exclusively develop, construct and build commercial building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.
- III. That the agreement was executed between the respondent and the complainants on 04.02.2016. However, the respondent has not executed the builder buyer agreement despite of receiving entire basic sale consideration from the complainants. The complainants have made several efforts to the respondent for executing the builder buyer agreement, but the respondent has not paid any heed to the just and genuine requests of the complainants.
- IV. That the complainants had purchased the above said unit on " Super Flexi Payment Benefit Assurance Plan", whereby the developer has assured the complainants to pay a monthly assured return as per the



- plan mentioned in the agreement which shall be payable by the respondent to the complainants till the issuance of possession letter.
- V. That as per the clause-5 sub clause (a) and (b) of the agreement dated 04.02.2016, the respondent was under legal obligation to pay the assured return commencing from the completion of 25% payment by the second party till the date of offer of possession towards the above said unit.
- VI. That the respondent has stopped paying the assured return and the said assured return is due from July, 2022. The complainants have requested and made all their umpteen efforts but the respondent has clearly denied to pay the said assured return to the complainants.
- VII. That from the said proviso of RERA, 2016, it is clearly evident that the builder is under legal obligation to pay the assured return to the complainants in terms of the agreement dated 04.02.2016.
- VIII. That the complainants have taken all possible requests and gestures to persuade the respondent, whereby requesting it to pay the monthly assured return towards super flexi payment benefit plan and delayed possession charges but the respondent miserably failed in doing so and to meet the just and fair demand of the complainants and completely ignored the request of the complainants.

C. Relief sought by the complainants:

4. The complainants sought following relief(s).
- Direct the respondent to pay the assured return towards super flexi payment benefit plan as per the terms and conditions of the agreement dated 04.02.2016.
 - Direct the respondent to pay delayed possession charges as per HRERA provisions.

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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 22.03.2024 contested the complaint on the following grounds: -

- I. That the respondent and complainants execute the agreement on 4th February 2016, in the said agreement the respondent specifically mentioned that they developed the commercial shop bearing no. 35 having super area of approx. 164.00 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 acres in the revenue village of kherki majra dhankot, sector - 99, Tehsil and district Gurugram, Haryana.
- II. That the respondent after revised site plan allotted a new commercial shop bearing no. 29, having its area 190 sq. ft. instead commercial shop bearing no. 35 having its area 164 sq. ft. After revision the respondent issued several demand letters against the complainants and the complainants accepted each and every demand letters and made the payment as per the demand letters.
- III. That the respondent as per the agreement paid the enhanced monthly flexi payment to complainants from 30.11.2018 to 15.09.2022 amount of Rs. 7,18,954/- including TDS.
- IV. That the complainants are not entitled to claim delay possession interest from the respondent because as per the terms of the

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agreement the complainants have no right to file any complaint before the Hon'ble Real Estate Regulatory Authority Gurugram.

- V. 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 Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter due to the second covid wave from January to May 2021 once again the construction activities came to a standstill. The covid pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by this Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid lockdown. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.
- 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

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- of the construction activities for months which also contributed in the delay in completing the project within the specified time period.
- VII. That the delivery of the shop by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance which is later, was incumbent upon the complainant making timely payments. The complainants, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due instalments. Therefore, the complaint is forbidden to demand the timely performance of the 'contractual obligation' by the respondent wherein the complainant herself 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. The Government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of Affordable Housing Policy, 2013. The photographs of the project are attached herein which clearly proves that the project is ready to

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be handed over and the formalities of obtaining occupation certificate remains pending. The respondent had applied for grant of occupation certificate vide application dated 22.12.2022 and the same is expected soon.

- IX. That the Project Riddhi Siddhi, Sector – 99, Gurugram is an affordable group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013, wherein the Government of Haryana has set a razor thin margin to make housing available for all. Thus, the grant of interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as applicable to other normal group housing real estate projects is wholly unreasonable and unjust, will impose unnecessary financial burden on the respondent and it shall have a cascading effect on the development and construction works of the project and in obtaining all other relevant approvals.
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 complainants.

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

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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 complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding force majeure conditions:

11. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various lockdown due to outbreak of Covid-19 pandemic which further led to

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shortage of labour. In the present matter the agreement between the parties was executed on dated 04.02.2016. The said agreement is silent with respect to the possession clause. Since the project falls under the Affordable Group Housing Policy, 2013, the due date of possession shall be determined in accordance with Clause 1(iv) of the said policy. As per clause 1 (iv) of the Affordable Group Housing Policy, 2013 the possession shall be handed over within a period of 4 years from the date of grant of sanction of building plans or date of receipt of environment clearances, whichever is later. The building plans were sanctioned on 17.10.2014 and the environment clearance was obtained on 22.01.2016. Therefore, the due date is calculated from the date of environment clearance being later. Hence, the due date of possession comes out to be 22.01.2020. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

- i. Direct the respondent to pay the assured return towards super flexi payment benefit plan as per the terms and conditions of the agreement dated 04.02.2016.
- ii. Direct the respondent to pay delayed possession charges as per HRERA provisions.

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Assured Return

12. The complainants in the present complaint are seeking payment of pending assured return as per the terms of the agreement dated 04.02.2016. The complainants have submitted that the respondent was obligated to pay committed assured return to the complainants from the period commencing on the completion of 25% payment of the booking amount i.e. 09.01.2016 till the date of the offer of possession. However, the respondent paid the assured return to the complainants till September 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.
13. 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 complainants besides initiating penal proceedings. Thus, the promoter is liable to pay that amount as agreed upon.
14. In the present complaint, the assured return was payable as per clause B of agreement dated 04.02.2016, which is reproduced below for the ready reference:

B. "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."

15. Further, the Super Flexi Payment Benefit Plan (The Plan) as well as demand letter dated 21.01.2020 provides that 25% of the booking amount was paid by the complainants-allottee on 09.01.2016. Thus, the agreed assured return was payable w.e.f. 09.01.2016, till the letter for offer of possession is issued to the complainants.
16. In light of the reasons mentioned above, the authority is of the view that as per the agreement dated 04.02.2016, 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 04.02.2016. Accordingly, the liability of the respondent to pay assured return as per agreement dated 04.02.2016 is still continuing. Hence, the respondent/promoter is directed to pay pending assured return to the complainants at the agreed rate till issuance of valid offer of possession to the complainants after receipt of occupation/completion certificate as per the agreement dated 04.02.2016, after deducting the amount already paid on account of assured return to the complainants.

Delay Possession Charges:

17. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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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

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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., 23.05.2025 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 complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/

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promoter which is the same as is being granted to him in case of delay possession charges.

19. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 22.01.2020. Till date no occupation certificate has been obtained by the respondent/promoter. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. 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.
20. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?
21. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the agreement dated 04.02.2016 at the rate at which assured return has been committed by the promoter in the super flexi payment plan. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that he will be entitled for this specific amount from 09.01.2016 till the valid offer of



possession of the said unit. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as his money is continued to be used by the promoter even after the promised due date and in return, he is to be paid either the assured return or delay possession charges whichever is higher.

22. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
23. In the present complaint, as per clause B of the agreement dated 04.02.2016, the amount on account of assured return was payable from 09.01.2016 till issuance of valid offer of possession. Further, it is to be noted that the occupation certificate for the project in question has not been received till date. Accordingly, the liability of the respondent to pay assured return as per agreement is still continuing. Hence, the respondent/promoter is directed to pay pending assured return to the complainants at the agreed rate till issuance of valid offer of possession to the complainants after receipt of occupation/completion certificate as per the agreement dated 04.02.2016, after deducting the amount already paid on account of assured return to the complainants.

H. Directions of the authority

18. 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 complainants at the agreed rate from the date i.e. 09.01.2016 till issuance of valid offer of possession to the complainants after receipt of occupation/completion certificate as per the agreement dated 04.02.2016, after deducting the amount already paid on account of assured return to the complainants.
 - ii. The respondent is directed to pay arrears of accrued assured return as per agreement dated 04.02.2016 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.
19. Complaint stands disposed of.
20. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 23.05.2025