

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

Complaint no. : 4622 of 2023
Date of complaint : 14.03.2024
Date of order : 03.09.2025

Arun Khatri,
R/o: - Plot No. 86, Gali No.2,
Dinpur Extension, Najafgarh, Delhi-110043.

Complainant**Versus**

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

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Raj Kumar Hans (Advocate)
Kirandeep Kaur (Advocate)

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	117, 164 sq.ft. (Super area) (page 21 of complaint)
8.	Date of allotment	N/A
9.	Date of Shop buyer's agreement	25.11.2015 (Page 23 of complaint)
10.	Possession Clause	Not Provided
11.	Due date of possession	25.11.2018 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
12.	Total sale consideration	Rs.19,08,960/- (exclusive of EDC/IDC and applicable taxes) (page 21 of complaint)
13.	Amount paid by the complainant	Rs.21,09,388/- (as per complainant's account statement on page 32-40 of complaint)
14.	Assured return paid	Rs.9,93,020/- (as per page 38 of reply)
15.	Occupation certificate	Not yet obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant applied for a commercial shop unit in project of respondent namely "99 Marina Bay" being part of affordable housing project "Riddhi Siddhi" at Sector 99, Gurugram, Haryana, for which the complainant had remitted Rs 1,00,000/- towards booking the shop/unit.
- II. That respondent allotted shop/unit bearing No. 117, shop in commercial complex named as "99 Marina Bay" admeasuring 164 sq. ft. The shop/unit was purchased under the "super flexi payment benefit plan" for basic sale consideration of Rs.19,08,960/-.
- III. That the respondent and the complainant entered into an agreement wherein, as per clause for the payment of "super flexi payment benefit plan" the respondent agreed to pay monthly instalments from the date of agreement till the time of actual offer of possession.
- IV. That till date complainant had paid Rs.21,09,388/-, but when complainant observed that there is no progress in construction of subject shop/unit for a long time, he raised his grievance to respondent.
- V. That the complainant has always paid the instalment(s) on time and the last instalment was paid on 14.11.2018. That there is a slow progress in the construction of the project, and it is expected to take around 1-2 years more for the completion of the project.
- VI. That the respondent missed many monthly instalments and completely stopped paying monthly assured return from July 2022 and has not paid any amount since then, and even after many verbal communications by the complainant was raised no satisfactory response has been received from the respondent.

- VII. That the main grievance of the complainant in the present complaint is that, in spite of the complainant having paid more than 100 % of the actual amount of the shop/unit, the respondent has failed to deliver the possession of the shop/unit which was a core promise of the Affordable Housing Policy, 2013.
- VIII. That also respondent has completely stopped paying monthly interest from the month of July 2022 which itself is a contravention to the obligation under the agreement executed between the complainant and the respondent.
- IX. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, they are liable to be punished and compensate the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay pending assured return till actual legal possession is offered.
 - Direct the respondent to pay delay possession charges and to handover physical possession of the shop.
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 14.03.2024 on the following grounds: -
- That this Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
 - 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 25.11.2015 and in the said agreement, the respondent specifically mentioned that they developed the commercial shop bearing no. 117 having super area of approx. 164 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 pay the assured interest as per the down payment benefit plan from November 2015 to June 2022 amount of Rs.9,93,020/- including TDS.
- v. That the complainant is not entitled to claim delay possession interest from the respondent because as per the terms of the agreement, the complainant have no right to file any complaint before RERA, Gurugram.
- vi. 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.

- vii. 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.
- viii. 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.
- ix. 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.
- x. 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 25.11.2018. 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 leading to such a delay in the completion. Thus, the respondent cannot be granted 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 pay pending assured return till actual legal possession is offered.

G.II Direct the respondent to pay delay possession charges and to handover physical possession of the shop

13. The complainant in the present complaint is seeking payment of pending assured return as per the terms of the agreement dated 25.11.2015. 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. 16.11.2015 till

the date of the offer of possession. However, the respondent paid the assured return to the complainant till July 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.

14. 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.
15. In the present complaint, the assured return was payable as per clause B of agreement dated 25.11.2015, 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) provides that 25% of the booking amount was paid by the complainant-allottee on 16.11.2015. Thus, the agreed assured return was payable w.e.f. 16.11.2015, till the letter for offer of possession is issued to the complainant.

16. In light of the reasons mentioned above, the Authority is of the view that as per the agreement dated 25.11.2015, 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 25.11.2015. Accordingly, the liability of the respondent to pay assured return as per agreement 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. 16.11.2015 till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate as per the agreement dated 25.11.2015, after deducting the amount already paid on account of assured return to the complainant.

17. Further, the complainant is seeking delay possession charges at prescribed rate from the respondent in terms of Section 18 of the Act, 2016.
18. **Due date of possession:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**
19. In view of the above-mentioned reasoning, the date of agreement i.e. 25.11.2015 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 25.11.2018.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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.

21. 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.
22. 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., 03.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay 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;"

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to complainant in case of delay possession charges.
25. On consideration of the documents available on record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. It is determined that the possession of the subject unit was to be delivered by 25.11.2018. However, the respondent has failed to hand over possession of the subject unit till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the booked unit to the complainant. Further no CC/part CC 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 promoter as well as allottees.
26. 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 complainant is entitled to delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. 25.11.2018 till offer of possession plus 2 months after obtaining completion 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.
27. 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 delay possession charges?

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 BBA or in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The authority observes that the purpose of assured return and delay possession charges is similar and the same is to be provided to the allottee to safeguard his interest as the money of the allottee 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 as the payment of assured return and the delay possession charges would result in double benefit to the complainant and would not balance the equities between the parties. Accordingly, the Authority decides that the allottee shall be entitled to assured return or delay possession charges, whichever is higher without prejudice to any other remedy including compensation.

28. The Authority observes that as per the agreement dated 25.11.2015, the maximum assured return amount which has been committed by the promoter is Rs.15,908/- (inclusive of TDS) per month. If we compare this assured return with delay possession charges payable under proviso to Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the delay possession charges are much better. By way of delay possession charges, the interest of the allottee is protected even after the due date of possession is over.
29. Therefore, considering the above said facts, the Authority directs the respondent to pay delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. 25.11.2018 till offer of possession plus 2 months after obtaining completion 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. However, the respondent shall be entitled to deduct/adjust the amount paid by it to the complainant on account of assured return for the period commencing from the due date of possession i.e. 25.11.2018 till the date of order, from the total amount payable towards delay possession charges.

30. The respondent is further directed to handover possession of the subject unit allotted to the complainants in terms of Section 17(1) of the Act of 2016 after obtaining completion certificate from the competent authority.


F. Directions of the authority:

31. 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 is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e. 25.11.2018 till offer of possession plus two months after obtaining completion certificate/part completion 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. However, the respondent shall be entitled to deduct/adjust the amount paid by it to the complainant on account of assured return for the period commencing from the due date of possession i.e. 25.11.2018 till the date of order, from the total amount payable towards delay possession charges.
 - ii. The arrears of such interest accrued from the due date i.e. 25.11.2018 till the date of order by the Authority shall be paid by the respondent to the complainant 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 shall handover possession of the subject unit allotted to the complainant in terms of Section 17(1) of the Act of 2016, within three months after obtaining completion certificate from the competent authority.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement dated 25.11.2015.
32. Complaint stands disposed of.
33. File be consigned to registry.

Dated: 03.09.2025



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