

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

Date of order : 23.12.2025

NAME OF THE BUILDER		M/S PIVOTAL INFRASTRUCTURE PRIVATE LIMITED	
PROJECT NAME		"99 Marina Bay" in project "Ridhi Sidhi"	
SR. NO.	CASE NO.	CASE TITLE	APPEARANCE
1.	CR/2849/2024	Anil Kumar V/S M/s Pivotal Infrastructure Private Limited	Shri Vijay Pal Chauhan Advocate and Shri Ankit Vohra AR
2.	CR/4082/2024	Suman Lata Sharma V/S M/s Pivotal Infrastructure Private Limited	Shri Ashish Budhiraja Advocate and Shri Ankit Vohra AR
3.	CR/4083/2024	Navjagan Sharma V/S M/s Pivotal Infrastructure Private Limited	Shri Ashish Budhiraja Advocate and Shri Ankit Vohra AR

CORAM:Shri Arun Kumar
Shri Phool Singh Saini**Chairman**
Member**ORDER**

1. This order shall dispose of all three (3) the complaints titled as above filed before this authority 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 there under or to the allottee as per the agreement for sale executed inter se.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Riddhi Siddhi" (Affordable Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Pivotal Infrastructure Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	"99 Marina Bay" in project "Ridhi Sidhi" by M/s Pivotal Infrastructure Private Limited, situated in Sector- 99, Gurugram.	
Project Area	6.19375 acres	
Nature of the project	Affordable Group Housing Colony	
DTCP License No.	86 of 2014 dated 09.08.2014 valid up to 08.08.2019	
RERA Registered	Registered Vide no. 236 of 2017, extension 177 of 2019 dated 30.12.2019	
Possession clause: -	No possession clause is provided in BBA.	
Possession clause as per The Affordable Housing Policy, 2013.	1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environment clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.	
Date of sanction of building plans:	17.10.2014	
Date of approval of environmental clearance:	22.01.2016	
Due date of possession: 22.01.2020	(Note: the due date of possession is calculated from the date of environment clearance dated 22.01.2016, being later)	
Occupation certificate: -	Not obtained. (Applied for OC on 22.12.2022)	
Offer of possession:	Not offered.	
Payment plan:	Super Flexi Payment Benefit Plan	
Super flexi payment benefits are payable till	B. Super flexi payment benefit amount shall be payable for the period commencing on the completion of 25% by the 2 nd party after the payment of the booking amount and till the date the letter of 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 from the competent authority in relation to the commercial complex.

Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of AL & BBA	Total sale consideration and amount paid
1.	CR/2849/2024 Anil Kumar V/S M/s Pivotal Infrastructure Private Limited DOF 03.07.2024 Reply 27.03.2025	Commercial Shop No.51 237 sq. ft. (Super area) [Old] (As per clause 2 of BBA page no. 18 of the complaint) Commercial Shop No.55 240.22 sq. ft. (super area) [New] (as mentioned in demand letter dated 17.02.2024 at page 36 of complaint)	Allotment letter: Not Provided BBA: 30.12.2016 (page 18 of complaint)	BSC: - Rs.28,44,000/- (As per clause 2 of BBA at page no. 18 of the complaint) AP: - Rs.29,89,243/- (As per receipts at page no. 23-29 Plus two copies of cheques at page 30-31 of the complaint)
2.	CR/4082/2024 Suman Lata Sharma V/S M/s Pivotal Infrastructure Private Limited DOF 13.09.2024 Reply 09.10.2025	Commercial Shop No. 39 164 sq. ft. (super area) (As mentioned in BBA at page no.13 of the complaint)	Allotment letter: Not provided BBA: 04.12.2015 (page 12 of complaint)	TSC: - Rs.20,66,400/- (As per clause 2 of BBA at page no. 14 of the complaint) AP: - Rs.22,62,277/- (as per receipts at page 18- 31 of complaint)
3.	CR/4083/2024 Navjagan Sharma V/S M/s Pivotal Infrastructure Private Limited DOF 13.09.2024 Reply 09.10.2025	Commercial Shop No. 66 217 sq. ft. (super area) (As mentioned in BBA at page no.12 of the complaint)	Allotment letter: Not provided BBA: 24.06.2015 (page 11 of complaint)	TSC: - Rs.28,64,000/- (As per BBA at page no.12 & 13 of the complaint) AP: - Rs.31,25,420/- (as mentioned in demand letter dated 06.10.2023 at page 27 of complaint)

The complainant in the above complaint(s) have sought the following reliefs:

1. To direct the respondent to construct and complete the project in all respect and deliver the possession of the shop allotted in favor of the complainant after obtaining occupation certificate from the concerned competent authorities.
2. To direct the respondent to pay delayed possession interest on the amount paid by the complainant at the prescribed rates from the due date of possession in terms of

agreement till the actual date of possession on every month along with arrears as per the provisions of the RERA Act, 2016.

3. The respondent be directed to pay arrears of assured monthly benefit to the complainant which was not paid by the respondent along with applicable interest and to pay the assured rental as per commitment.
4. The complainant is also entitled to any other relief to which he is found entitled by this Hon'ble Authority.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
BBA	Builder's Buyer Agreement
BSC	Basic Sale consideration
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2849/2024 titled as Anil Kumar V/S M/s Pivotal Infrastructure Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.
 - A. **Unit and project related details**
7. 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:

CR/2849/2024 titled as Anil Kumar V/S M/s Pivotal Infrastructure Private Limited

S. No.	Particulars	Details
1.	Name and location of the project	"99 Marina Bay" in project "Ridhi Sidhi" at Sector-99, Gurugram, Haryana
2.	Nature of the project	Commercial Space in Affordable Group Housing
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 Valid up to 08.08.2019
5.	RERA Registered/ not registered	Registered 236 of 2017 dated 19.09.2017 valid up to 08.08.2019
6.	Registration extension vide no.	HARERA/GGM/REP/RC/236/2017/ EXT/177/2019 dated 30.12.2019 valid up to 31.08.2020
7.	Unit no.	Commercial Shop no.51 [Old] (As per clause 2 of BBA page no. 18 of the complaint) Commercial Shop no.55 [New] (as mentioned in demand letter dated 17.02.2024 at page 36 of complaint)
8.	Unit area admeasuring	237 sq. ft. (Super area) [Old] (As per clause 2 of BBA page no. 18 of the complaint) 240.22 sq. ft. (Super area) [New] (as mentioned in demand letter dated 17.02.2024 at page 36 of complaint)
9.	Date of agreement for sale	30.12.2016 (As per page no. 18 of the complaint)
10.	Date of building plan approval	17.10.2014 (As per page no. 19 of the reply)
11.	Environmental clearance dated	22.01.2016 (As per page no. 25 of the reply)

12.	Possession clause [as per BBA]	No possession clause is provided in BBA.																																													
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14.	Due date of possession	22.01.2020 [Note: Due date of possession to be calculated 48 months from the date of environmental clearance i.e., 22.01.2016, being later]																																													
15.	Payment Plan: Super Flexi Payment Benefit Plan ("The Plan")	<table border="1"> <thead> <tr> <th>Sr. no.</th> <th>Particular</th> <th>Date</th> <th>Amount</th> <th>Benefit per month (in Rs.)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>At the time of booking</td> <td>17.09.2016</td> <td>Rs.1,00,000/-</td> <td>Nil</td> </tr> <tr> <td>2</td> <td>Amount payable within 30 days of payment of booking amount</td> <td>17.10.2016</td> <td>Rs.3,42,995/- Rs.3,00,000/-</td> <td>Rs.5,925/-</td> </tr> <tr> <td>3</td> <td>Total price payable 6 months commencing from the date of payment of booking amount</td> <td>17.03.2017</td> <td>Rs.3,55,500/-</td> <td>Rs.8,887/-</td> </tr> <tr> <td>4</td> <td>Total price payable 12 months commencing from the date of payment of booking amount</td> <td>17.09.2017</td> <td>Rs.3,55,500/-</td> <td>Rs.11,850/-</td> </tr> <tr> <td>5</td> <td>Total price payable 18 months commencing from the date of payment of booking amount</td> <td>17.03.2018</td> <td>Rs.3,55,500/-</td> <td>Rs.14,812/-</td> </tr> <tr> <td>6</td> <td>Total price payable 24 months commencing from the date of payment of booking amount</td> <td>17.09.2018</td> <td>Rs.3,55,500/-</td> <td>Rs.17,775/-</td> </tr> <tr> <td>7</td> <td>Total price payable 30 months commencing from the date of payment of booking amount</td> <td>17.03.2019</td> <td>Rs.3,55,500/-</td> <td>Rs.20,737/-</td> </tr> <tr> <td>8</td> <td>Total price payable 36 months commencing from the date of payment of booking amount</td> <td>17.09.2019</td> <td>Rs.3,55,500/-</td> <td>Rs.23,700/-</td> </tr> </tbody> </table> <p><i>*The benefit shall be applicable only in case of payment of subsequent instalments. (As per BBA page no. 20-21 of the complaint)</i></p>	Sr. no.	Particular	Date	Amount	Benefit per month (in Rs.)	1	At the time of booking	17.09.2016	Rs.1,00,000/-	Nil	2	Amount payable within 30 days of payment of booking amount	17.10.2016	Rs.3,42,995/- Rs.3,00,000/-	Rs.5,925/-	3	Total price payable 6 months commencing from the date of payment of booking amount	17.03.2017	Rs.3,55,500/-	Rs.8,887/-	4	Total price payable 12 months commencing from the date of payment of booking amount	17.09.2017	Rs.3,55,500/-	Rs.11,850/-	5	Total price payable 18 months commencing from the date of payment of booking amount	17.03.2018	Rs.3,55,500/-	Rs.14,812/-	6	Total price payable 24 months commencing from the date of payment of booking amount	17.09.2018	Rs.3,55,500/-	Rs.17,775/-	7	Total price payable 30 months commencing from the date of payment of booking amount	17.03.2019	Rs.3,55,500/-	Rs.20,737/-	8	Total price payable 36 months commencing from the date of payment of booking amount	17.09.2019	Rs.3,55,500/-	Rs.23,700/-
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17.	Basic sale consideration	Rs.28,44,000/- (As per clause 2 of BBA page no. 18 of the complaint)
18.	Amount paid by the complainant	Rs.29,89,243/- [Rs.23,78,932/- + Rs.6,10,311/-] (As per receipts at page no. 23-29 Plus two copies of cheques at page 30-31 of the complaint)
19.	Assured return paid by the respondent <i>[From December, 2016 till March, 2022]</i>	Rs.11,58,991/- (as per details provided at page no.35 of reply)
20.	Application for grant of OC	22.12.2022 (As per page no. 39 of the reply)
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainant has made the following submissions: -

- I. That the complainant is law abiding citizen of India and belongs to low middle class family.
- II. That being impressed by the advertisement shown by the Respondent through various mode of communication including but not limited to

newspapers and pamphlets the complainant came to know that the respondent is developing a commercial space/shop named as "99 Marina Bay" in the Affordable Group Housing Colony under the name of "Riddhi Siddhi" on land admeasuring 6.19375 in Village Kherki Majra Dhankot, Sector 99, Tehsil and District Gurgaon. In which the respondent has obtained the licence bearing no 236/2014, dated 08.08.2014 from the Director, Town and country Planning, Haryana, Chandigarh (DTCP).

- III. That the complainant on showing the rosy pictures has booked a shop in the above stated complex on 17.09.2016 by paying a cheque of Rs.1,00,000/- bearing no.090247 and rest of the payment to be done as per Super Flexi Payment Benefit Plan mentioned in the agreement. That it was assured rental plan. That it is also pertinent to mention here that shop no.51 which was a corner shop allotted to the complainant and Rs. 2 Lakh were charged in cash as PLC charges and no receipt was provided for the PLC charges to the complainant by the respondent.
- IV. That the complainant has paid the entire amount for the said shop as per Payment Plan and it was Super Flexi Payment Plan and respondent assured the monthly benefit from booking till physical possession. The respondent had paid the assured monthly benefit till Feb.2022 and stopped the payment of the assured monthly benefit as committed.
- V. That the complainant has paid the entire amount toward the entire sale consideration of said shop.
- VI. That it is not out of place to mention that Building Plans of the project were sanctioned on 17.10.2014 and environmental clearance were received on 22.01.2016 and pursuant thereof the construction of the project commenced on 22.01.2016 (as per documents provided by the Respondent to the RERA Authority (FORM REP-I, Part C).

- VII. That a one-sided shop buyer agreement was executed by the respondent in favour of the complainant on dated 30.12.2016. The terms and conditions of the agreement were totally one sided in favour of the respondent and against the complainant.
- VIII. That the due date of possession of the apartment was not mentioned in one-sided agreement only mentioned that possession was offered whenever OC received of the project.
- IX. That the respondent stopped the making payment toward assured monthly benefit in February, 2022 to the complainant as per the commitment made by the respondent. Thereafter the complainant made several follow up with the respondent but the respondent did not pay any heed to the complainant request as on date an amount of Rs.4,05,000/- plus applicable interest is still outstanding against the respondent of assured monthly benefit.
- X. That pursuant to the terms and conditions of the agreement the complainant has been continuously and regularly paying the amount pursuant to the demand letters issued by the respondent and as per the Schedule of Payment. Till date of filing the complaint in hand the complainants have paid an amount of Rs.28,18,856/- (excluding of taxes) to the respondent which has been acknowledged and confirmed by the respondent by issuing payment receipts.
- XI. That it gives utter surprise to complainant that, respondent sent a letter dated 17.02.2024, regarding due installment pertaining to shop very cleverly respondent has changed the shop no 51 to shop no.55 and area for the shop also increased from 237 Sq. feet to 240.22 Sq. feet.
- XII. That whenever the complainant visited the office of the respondent, and inquire about the same and found that only shop number is not changed but also the location has changed from corner to mid of the row. The complainant lodged his grievance but, he was sent back on verbal assurance

that his grievance would soon be redressed and possession of the Shop would be offered very soon after the completion of the project. However, till date there is no progress at all.

- XIII. That as the respondent failed to live up of its commitment and failed to deliver the possession of the shop no. 51(Corner Shop) to the complainants by due date, the complainants asked the respondent for delay penalty on the amount paid by them along with compensation, but he grievance of the complainant has not been redressed by the respondent.
- XIV. That due to non-performance of its obligations and duties the complainant is going through mental pain and agony as he is paying rent as well as monthly installment to the bank.
- XV. That the entire sequential of events leading to the instant complaint establish the malafide intent of the Respondent to defraud the Complainant of his hard-earned money. In this hue, it is reverentially submitted that such conduct on the part of the respondent is tantamount to breach of the contractual obligations of the Agreement. Ergo, the complainant is entitled to exercise its right conferred by the Real Estate (Regulation & Development) Act, 2016 under section 31 read with section 19(3) read with section 18 on in alternative section 19(4) read with section 18 of the Act.
- XVI. That the great prejudice shall be caused to the complainant if the present complaint with humble submission and relief are not allowed.
- XVII. That due to the acts of the above and terms and conditions of the agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of aforesaid act of unfair trade practice.
- XVIII. That there are clear unfair trade practices and breach of contract and deficiency in services of the respondent and much more a smell of playing fraud with the complainant and other allottees and is prima facie clear on

the part of the respondent which makes them liable under the provisions of the RERA Act.

- XIX. That the complainant does want to withdraw from the project. The respondent has not fulfilled its obligations provided under the RERA Act, 2016 and therefore the respondent is obligated to pay interest at the prescribed rate for every month of delay till the handing over of the possession.
- XX. That the present complaint has not been filed by the complainant for seeking compensation, without prejudice, complainant reserve the right to file a complaint for grant of compensation with the Adjudicating Officer.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent to construct and complete the project in all respect and deliver the possession of the shop allotted in favor of the complainant after obtaining occupation certificate from the concerned competent authorities.
 - ii. Direct the respondent to pay delayed possession interest on the amount paid by the complainant at the prescribed rates from the due date of possession in terms of agreement till the actual date of possession on every month along with arrears as per the provisions of the RERA Act, 2016.
 - iii. Direct the respondent to pay arrears of assured monthly benefit to the complainant which was not paid by the respondent along with applicable interest and to pay the assured rental as per commitment.
 - iv. The complainant is also entitled to any other relief to which he is found entitled by this Authority.
10. 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:

11. The respondent contested the complaint by way of reply dated 27.03.2025 on the following grounds: -

- i. That the present complaint in the present form is not maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.
- ii. That this Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
- iii. That the respondent was granted a license bearing no. 86 of 2014 dated 09.08.2014 for the development of an affordable group housing residential colony on the land admeasuring area of 6.19375 acres situated in the revenue state of village Kherki-Marja Dhankot, Sector-99, Gurugram. The respondent, thereafter, obtained all the relevant approvals and sanctions to commence the construction of the project. the respondent obtained the approvals of the building plans vide approvals dated 17.10.2014 and also obtained the environmental clearance vide approval dated 22.01.2016.
- iv. That the respondent and complainant execute the agreement on 30-12-2016 in the said agreement the respondent specifically mentioned that they developed the commercial shop bearing no. 51 (later changed to shop no. 55, admeasuring 240.22 Sq. Ft), 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.
- v. That the respondent as per the agreement terms pay the enhanced monthly flexi payment to complainant from December 2016 to March 2022 amount of Rs.11,58,991/- including TDS. 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 the Authority.

- 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 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 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.
- 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 in the delay in completing the project within the specified time period.

- viii. 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 complainant, 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.
- 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.
- x. 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 respondent had applied for grant of occupation certificate vide application dated 22.12.2022 and the same is expected soon.
- xi. 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.

xii. That since the said project is located at a prime location near the Dwarka Expressway, Gurugram and there is huge premium in the open market on the flats situated in said project which would compensate the allottees of the project in more than adequate manner including any compensation for the delay in delivery of the project. This is further to note here that the respondent is not seeking any enhancement of price or payment other than what has been prescribed under the Affordable Housing Policy, 2013.

12. All other averments made in the complaint denied in toto.

13. 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:

14. 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

15. 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

16. 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.

17. 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:

18. 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 in NCR region, increase in cost of construction material and shortage of labour, demonetization and implementation of GST and outbreak of Covid-19 pandemic, etc. However, all the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the events of demonetization and the implementation of GST are in accordance with government policy and guidelines. Therefore, the respondent cannot categorize

them as force majeure events. Thus, the same is devoid of merits and lastly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion 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. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to construct and complete the project in all respect and deliver the possession of the shop allotted in favour of the complainant after obtaining occupation certificate from the concerned competent authorities;

G.II Direct the respondent to pay delayed possession interest on the amount paid by the complainant at the prescribed rates from the due date of possession in terms of agreement till the actual date of possession on every month along with arrears as per the provisions of the RERA Act, 2016;

G.III Direct the respondent to pay arrears of assured monthly benefit to the complainant which was not paid by the respondent along with applicable interest and to pay the assured rental as per commitment;

G.IV Any other relief which the Authority deems fit and proper in the facts & circumstances of the present complaint.

19. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
20. The complainant in the present complaint is seeking payment of pending down payment benefit amount as per the terms of the agreement dated 30.12.2016. The complainant has submitted that the respondent was obligated to pay super flexi

benefit amount to the complainant for the period commencing from the date on the completion of 25% after the payment of the booking amount till the date of issuance of offer of possession after receipt of occupation certificate. However, the respondent paid the said benefit amount/assured return to the complainant till March, 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.

21. 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 down payment benefit amount for a certain period. So, on its 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.
22. In the present complaint, the super flexi payment benefit was payable as per clause 5 A & B of the agreement dated 30.12.2016, which is reproduced below for the ready reference:

"5.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 of 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 from the competent authority in relation to the commercial complex."

Further, the Super Flexi Payment Benefit Plan (The Plan) provides that the benefit amount shall be payable upon completion of 25% of payment after the booking

amount. Thus, the agreed super flexi payment benefit amount was payable after receipt of payment of 25% of sale consideration after the booking amount till the letter for offer of possession is issued to the complainant.

23. In light of the reasons mentioned above, the Authority is of the view that as per the agreement dated 30.12.2016, it was obligation on the part of the respondent to pay the down payment benefit. 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 30.12.2016. Accordingly, the liability of the respondent to pay down payment benefit as per agreement is still continuing. Hence, the respondent/promoter is directed to pay monthly payment benefit to the complainant at the agreed rate from the date of receipt of payment of 25% of sale consideration after the booking amount till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate, as per the agreement dated 30.12.2016, after deducting the amount already paid on account of monthly benefit amount to the complainant.
24. Further, the complainant is seeking delay possession charges at prescribed rate from the respondent in terms of Section 18 of the Act, 2016.
25. **Due date of possession:** That as per 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.

(Emphasis supplied)

26. The respondent has obtained environment clearance and building plan approval in respect of the said project on 22.01.2016 and 17.10.2014 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. The due date of possession of the unit as per

Clause 1(iv) of the Affordable Housing Policy, 2013 is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016, being later. Therefore, the due date of possession comes out to be 22.01.2020.

27. **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.

28. 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.
29. 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., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
30. 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;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to complainant in case of delay possession charges.
32. The Authorized representative of the respondent during proceedings dated 23.12.2025 stated that the construction is completed and an application for the grant of occupation certificate has already been made to the concerned authority on 22.12.2022 but occupation certificate is yet to be obtained.
33. 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 22.01.2020. 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 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 promoter as well as allottees.
34. 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., @10.80% p.a. w.e.f. 22.01.2020 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.

35. The Authority observes that now, the proposition before the Authority whether an allottee who is entitled for down payment benefit even after expiry of due date of possession, is entitled to both the down payment benefit as well as delay possession charges?

To answer the above proposition, it is worthwhile to consider that the down payment benefit is payable to the allottee on account of a provision in the BBA. The Authority observes that the purpose of down payment benefit 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 down payment benefit 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 down payment benefit or delay possession charges, whichever is higher without prejudice to any other remedy including compensation.

36. The Authority observes that as per the agreement dated 30.12.2016, the super flexi payment benefit amount which has been committed by the promoter is @Rs.23,700/- per month till issuance of possession. Whereas the delayed possession charges @10.80% of the paid-up amount is payable approximately Rs.26,903/- per month from the due date of possession till offer of possession after receipt of occupation certificate from the competent authority. A comparative table showing comparison of super flexi payment benefit and delay possession charges, per months is reproduced below:

Sr. No.	Case No.	Super flexi benefit (per month)	DPC (per month)
1.	CR/2849/2024	Rs.23,700/-	Rs.26,903/-
2.	CR/4082/2024	Rs.17,220/-	Rs.20,360/-
3.	CR/4083/2024	Rs.26,257/-	Rs.28,128/-

37. Accordingly, the Authority decides that in cases where super flexi payment benefit is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to down payment benefit or delayed possession charges, whichever is higher, without prejudice to any other remedy including compensation.
38. If we compare this down payment benefit 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. Therefore, considering the above said facts, the Authority directs the respondent to pay interest to the complainant at the prescribed rate @10.80% per annum on account of delayed possession charges, from the due date of possession i.e., 22.01.2020 till issuance of valid offer of possession after obtaining completion certificate from the competent authority plus two months, being higher, than monthly payment benefit.
39. It is further observed by the Authority that in the present complaint, as per super flexi payment benefit plan, the respondent has paid monthly benefit to the complainant till March, 2022. However, the due date of possession is 22.01.2020 and the delay possession charges are payable being higher than super flexi payment benefits as detailed in para 35 to 37 above. Accordingly, the respondent shall deduct/ adjust the amount paid to the complainant on account of super flexi benefit plan from 22.01.2020 (due date of possession) till benefits paid to the complainant i.e., March, 2022, from the delay possession charges payable till date.
40. The respondent is directed to pay the outstanding accrued interest till date at the agreed rate within 90 days from the date of this order after adjustment of

outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

41. 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:

42. 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 to pay interest to the complainant against the paid up amount at the prescribed rate of 10.80% per annum for every month of delay on account of delayed possession charges, from the due date of possession i.e., 22.01.2020 till issuance of valid offer of possession after obtaining completion certificate from the competent authority plus two months 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, *ibid*.
 - ii. The respondent shall deduct/ adjust the amount already paid to the complainant on account of monthly benefits from 22.01.2020 till March, 2022.
 - iii. 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(s) within a period of 90 days from date of this order after adjustment of outstanding dues, if any, from the complainant and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules.
 - iv. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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.

- v. 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.
 - vi. The respondent shall not charge anything from the complainant which is not the part of the agreement dated 30.12.2016 as well as Affordable Housing Policy, 2013.
43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 44. True certified copy of this order shall be placed in the case file of each matter.
 45. Complaints as well as application, if any, stand disposed of accordingly.
 46. File be consigned to registry.



Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025



Arun Kumar
(Chairman)

HARERA
GURUGRAM