

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

Complaint no. : 1240 of 2020  
First date of hearing : 16.04.2020  
Date of decision : 08.10.2020

**Mrs. Mitu Sharma**

Address:- Flat NO. B-304, Karor CGHS Ltd.  
Plot No. 39-C, Sector-6, Dwarka Delhi-110075

**Complainant**

Versus

**1.Pivotal Infrastructure Pvt. Ltd.**

Address:- 309, 3<sup>rd</sup> floor JMD Pacific Square  
Sector-15 Part-II, Gurugram

**2.DTCP Haryana**

Address:- Huda Complex, Sector-14,  
Gurugram-122001

**Respondents**

**CORAM:**

Dr. K.K. Khendelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE**

Shri Rajan Kumar Hans  
None Present

Advocate for complainant  
Advocate for respondents

**ORDER**

1. The present complaint dated 13.03.2020 has been filed by the complainant/allottee in Form CRA 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 obligation, responsibilities and function to the allottee as per the agreement for sale executed inter se them.

2. The particulars of the project, the details of sale consideration, the amount paid by the respondent's date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form: -

S.No.	Heads	
1.	Project name and location	Riddhi Siddhi, Sector-99, Gurugram
2.	Project area	6.19375 acres
3.	Nature of project	Affordable Housing Project
4.	RERA registered/ not registered	Registered vide no. 236 of 2017 dated 19.09.2017 valid upto 08.08.2019 RENEWED UPTO 31.08.2020
6.	License No. & validity status	86 OF 2014 dated 09.08.2014 valid upto 08.08.2019
7.	Name of licensee	Pivotal Infrastructure Pvt. Ltd.
8.	Unit no., Tower no.	1003, 10 <sup>th</sup> floor, Tower- T7
9.	Carpet area	<b>487 sq. ft. as per agreement</b> <b>(587 sq. ft. as per complainant statement)</b>
10.	Date of execution of agreement	28.12.2015 (page no. 25 of the complaint)

12.	Payment plan	Time linked payment plan
13.	Total sale consideration	Rs.19,98,000/- (excluding tax as per agreement, page 29 of complaint)
14.	Total amount paid by the complainant	Rs. 21,56,822/- (as per receipt attached from page 67-77 of the complaint)
15.	Due date of delivery of possession as per agreement (clause 8.1: -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, environment clearness dated 22.01.2016)	22.01.2020 (due date calculated from the environment clearness date 22.01.2016)
16.	Period of delay in handing over possession till the date of order i.e. 08.10.2020	8 months 17 days (possession has not been handed so far)

3. As per clause 8.1 of the buyer's agreement dated 28.12.2015 the possession was to be handed over 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. The date of environmental clearances is 22.01.2016 therefore the due date of possession is 22.01.2020. Clause 8.1 of the buyer's agreement is reproduced below:

**"8.1" POSSESSION**

*The company shall endeavour 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 subject to timely payment by the allottee of all the amount payable under this agreement and performance by the allottee of all other obligations hereunder...*

4. The complainant submitted that on date 28.12.2015 a pre-printed one-sided agreement for allotted unit was executed between respondent no. 1 and complainant. As per clause 8.1 the respondent no.1 had to complete the construction of flat

and handover the possession within 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. That till date the respondent no. 1 has demanded Rs. 21,56,822/- for payment and the complainant has paid Rs. 21,56,822/- i.e. 100% of money demanded but the complainant observed that there is no progress in construction of subject flat for a long time, they raised their grievance to respondent no.1.

5. The complainant submitted that the respondent no.2 is also liable to for their negligence's to monitor the progress of the project as in the case of affordable housing, government department plays an active role and when the respondent no. 1 miserably failed to complete the structure as per BBA .
6. The complainant submitted that it has been more than 5 months since the DTCP have failed to take any action against the respondent no. 1 regarding this failure of respondent no. 1 to handover the possession to the allottees. That there is a clear unfair trade practice and breach of contract and

deficiency in the services by the respondent no. 1. Hence, this complaint inter-alia for the following reliefs:-

- i. To direct the respondent no.1 party to pay interest at the prescribed rate of interest on delayed possession since due date of possession till date of actual possession.
  - ii. Respondent no.1 may kindly be directed to complete and seek necessary govt. Clearances regarding infrastructure and other facilities including road, water, and sewerage. etc.
7. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
8. The authority issued notice of the complaint to the respondent by speed post as well as on given email address at ([legalrajan@gmail.com](mailto:legalrajan@gmail.com), [surinderfa@glsho.com](mailto:surinderfa@glsho.com), [stp4.gurugram.tcp@gmail.com](mailto:stp4.gurugram.tcp@gmail.com)) and the delivery reports have been placed in the file. Despite service of notice, the respondent has preferred not to file the reply to the complaint within stipulated period. Accordingly, the

authority is left with no other option but to decide the complaint ex parte against the respondent.

9. Copies of all the relevant documents have been filled 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 submission made by the complainant.
10. The Authority on the basis of information and other submission made and the document filled by the complainant and of considered view that there is no need of further hearing in the complaint.
11. On consideration of the circumstances, the evidence and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28 (2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of Apartment Buyers Agreement executed between the parties on 28.12.2015, possession of the booked unit was to be delivered within stipulated time i.e. by 22.01.2020. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the

part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 22.01.2020 till the handing over of physical possession of the booked unit as per the provision of section 18(1) of the Act read with rules 15 of the Rules.

12. In view of the above discussion the authority pass an order under section 34(f) of the Act, and issue the following directions:-


- (a) The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 22.01.2020 till the handing over of physical possession.
- (b) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on/ before 10<sup>th</sup> of every months.

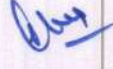



- (c) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (d) Interest on the due payments from the complainant shall be charged at the prescribed rate 9.30% per annum by the promoter which is same as is being granted to the complainants in case of delayed possession charges.

13. Complaint stands disposed of.

14. File be consigned to the registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

  
Dr. K.K. Khandelwal  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.10.2020

Judgement uploaded on 07.11.2020