

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

Complaint no. : 5029 of 2020
First date of hearing: 19.03.2021
Date of decision : 08.03.2022

Trilok Chand
R/O: - 898/13, Gandhi Colony,
Near Aggarwal Mandi, Panipat,
Haryana-132103

Complainant

Versus

1. Pivotal Infrastructure Private Limited
Regd. Office at: - 309, 3rd Floor, JMD Pacific
square, Sector-15, Part-II, Gurugram-122001
2. Director of Town and Country Planning
Address: DTP Planning Gurugram, Huda
Complex, Sector-14, Gurugram-122001

Respondents

CORAM:
Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Rajan Kumar Hans
Shri Rohan Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 19.01.2021 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	"Riddhi Siddhi" at sector 99, Gurugram
2.	Nature of the project	Affordable housing policy
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 issued on 09.08.14 valid up to 08.08.2019
5.	Name of Licensee	Pivotal infrastructure private limited
6.	RERA Registered/ not registered	Registered vide no. 236 of 2017 issued on 19.09.2017 valid up to 08.08.2019
7.	Apartment no.	805, 8 th floor, tower T-4 [annexure P2 on page no. 23 of complaint]
8.	Unit measuring	487 sq. ft. [annexure P2 on page no. 23 of complaint]

9.	Date of allotment letter	05.09.2015 [annexure P1 on page no. 15 of complaint]
10.	Date of execution of Flat buyer's agreement	22.01.2016 [annexure P2 on page no. 22 of complaint]
11.	Date of environment clearance	22.01.2016 [as per project details]
12.	Date of approval of building plans	17.10.2014 [as per project details]
13.	Total consideration	Rs. 21,56,903/- [as per the demand letter on page no. 54 of complaint]
14.	Total amount paid by the complainant	Rs. 21,06,982/- [as per the demand letter on page no.54 of complaint]
15.	Due date of delivery of possession	22.01.2020 [calculated from the date of environment clearance i.e., 22.01.2016]
16.	Possession clause	<p>B. POSSESSION</p> <p>B.1 "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 project or date of receipt of all the environment clearances necessary for the completion of the construction and development of projects, whichever is later, subject to timely payment by the allottee of all the amounts payable under this</p>

		agreement and performance by the allottee of all other obligations hereunder.
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainant in May 2015 got information about the affordable group housing project Riddhi Siddhi at sector 99 Gurugram from the local newspapers. When he called on the phone number provided in the newspaper the marketing staff of the builder promoter showed a very rosy picture of the project. Further, complainant visited the builder where local staff of builder gave an application form and assured complainant that the possession will be delivered within 36 months as it is a government project having a fixed payment instalments in every 6 months and on last instalment, the possession was to be delivered.
4. That the complainant applied for a 2 BHK residential unit and paid the booking amount of Rs. 1,00,000/-.
5. That on 05.09.2015 unit as detailed above was allotted to the complainant in the project for the total sale consideration of Rs.19,98,000/-.
6. That further on 22.01.2016, a builder buyer agreement was executed between both the parties. As per the clause 8.1 of the agreement the builder has to complete the construction of the flat and handover the possession within 4 years from the date of grant of sanction of building plan or the date of

receipt of environmental clearances whichever is later. The environment clearance was provided on 22.01.2016. Therefore, the due date of possession comes out to be 21.01.2020.

7. That it is pertinent to mention that till date the complainant has paid an amount of Rs. 21,56,903/- but there was no progress in construction on the project for a long time due to which complainant raised his grievances before the promoter.
8. That the respondent no. 2 i.e., DTCP, Haryana is also liable for negligence to monitor the progress of the project as in the case of affordable housing, government plays an active role. It has been more than 1 year since the DTCP has failed to take any action against the respondent-builder regarding failure to handover the possession.
9. Hence, both the respondents have failed to comply the guidelines mentioned in affordable housing policy, 2013.

C. Relief sought by the complainant:

10. The complainant has sought the following relief:
 - (i) Direct the respondent to pay interest at prescribed rate on delay possession since due date of possession till date of actual possession.
 - (ii) Direct the respondent to complete and seek government clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc.,

11. 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.

D. Reply by the respondent no. 1.

12. That the present complaint cannot be entertained and adjudicated by this hon'ble authority as it does not have jurisdiction to entertain and adjudicate the present complaint. The complaint filed herein by the complainant is violative of the provisions of the Act of 2016.
13. That the respondent no. 1 was granted license bearing no. 86 of 2014 dated 09/08/2014 to develop 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 no. 1, thereafter, obtained all the relevant approvals and sanctions to commence the construction of the project. The respondent no. 1 obtained the approvals of the building plans vide approvals dated 17/10/2014 and therefore obtained the environmental clearance vide approvals dated 22/01/2016.
14. That the respondent no. 1 further obtained the registration under RERA Act, and the respondent no. 1 was granted the registration no. 236 of 2017. The said RERA registration was valid till 08/08/2019 which was extended by this hon'ble authority till 31/08/2020.

15. That it is clearly evident from the aforesaid approvals granted by the various authorities, that the respondent no. I was entitled to complete and build the project till 31/08/2020. However, due to the outbreak of the pandemic Covid-19 in March 2020, there was a national lockdown imposed as a result all the construction activities were severely hampered.
16. 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.
17. That the promoter had diligently carried out the construction of the project and had made the efforts to complete the project within the given time period but due to the covid-19 pandemic there was severe shortage of labour for around 9-12 months which resulted in the pace of construction being set to naught. Although this hon'ble authority had therefore granted 6 months extension but the same was clearly not enough for completing the project and therefore the

promoter is making all efforts to complete the development of the project by the end of this year 2021.

E. Reply by the respondent no. 2.

18. That the case relates to the payment of interest at prescribed rate on delayed possession since the due date of possession, till the actual possession of flats in Riddhi Siddhi project at sector 99, Gurugram.
19. That the DTCP is government body that deals with the grant of license, approval of building plans and grant of occupation certificate.
20. That the complainant has wrongly impleaded a party in the present case as respondent no. 2. The complainant has no cause of action against the answering respondent as the grievance lodged by him is bilateral and does not come under the purview of it in reference to the orders of the Hon'ble Apex court in CA no. 550 of 2003 **DLF Universal Ltd. & Anr. Vs. Director Town and Country Planning & Ors.** & as per the commentary of section 3 of the Haryana Development & Regulation of Urban Area Act, 1975 "Director can issue directions and can inspect the site of colonizer to judge the implementation of conditions of licence regarding the execution of layout but cannot review the terms of the agreement entered between colonizer and allottees- DLF Universal Ltd. Vs. Director, Town & Country Planning, Haryana 2010(2) HLR 575 S.C. So, the present case is liable to be dismissed.

F. Jurisdiction of the authority

21. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

22. 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.

F. II Subject matter jurisdiction

23. 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)(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; The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including

payment of assured returns as provided in Builder Buyer's Agreement.

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.

24. 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 complainant at a later stage.

G. Findings on the objections raised by the respondent/ builder.

G.I Objection regarding delay due to force majeure.

25. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as national lockdown, shortage of labour due to covid 19 pandemic, stoppage of construction due to various orders and directions passed by hon'ble NGT, 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 but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement

was executed between the parties on 22.01.2016. As per the possession clause of the agreement, the possession of the said unit was to be delivered within 4 years from the date of grant of sanction of building plans for the project or date of receipt of all environment clearances, whichever was later. The due date of possession is calculated from date of environmental clearance i.e., 22.01.2016, which comes out to be 22.01.2020. The authority is of the view that the events taking place do not have any impact on the project being developed by the respondent. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

H. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

- (i) **Direct the respondent to pay interest at prescribed rate on delay possession since due date of possession till date of actual possession.**

26. In the present case, the complainant 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, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

27. Clause 8 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 8.1- Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of company and subject to the company having obtained the occupation/completion certificate from the competent authorities, 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 amounts payable under this agreement and performance by the allottee of all other obligations hereunder.

28. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreements and in

compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges and 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.

30. 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.
31. 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 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.
32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondent/promoter which is the same as is being granted to him in case of delay possession charges.
34. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that flat buyer's agreement executed between the parties on 22.01.2016 and the possession of the booked unit was to be delivered 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 whichever is later. The due date of possession is calculated from date of environmental clearance i.e., 22.01.2016, which comes out to be 22.01.2020.
35. Accordingly, 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 held entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by him to the respondent from

the due date of possession i.e., 22.01.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

I. Directions of the authority

36. 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 at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The complainant is also directed to pay the outstanding dues, if any.

iv. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

37. Complaint stands disposed of.

38. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.03.2022



HARERA
GURUGRAM