

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

Complaint no. : 2427 of 2021  
First date of hearing: 21.06.2021  
Date of decision : 08.03.2022

Rajat Bahl  
R/O: - 4244, Sector-B, Pocket 5&6,  
Vasant Kunj, New Delhi-110070

**Complainant**

Versus

1. Pivotal Infrastructure Private Limited  
**Regd. Office at:** - 704, 705 7<sup>th</sup> Floor,  
JMD Pacific, Sector 15, Part II,  
Gurugram- 122001
2. M/S Indiabulls Housing Finance Limited  
**Office at:** 448-451, Udyog Vihar,  
Phase 5, Gurugram-122022

**Respondents**

**CORAM:**

Shri KK Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Deepak Kr. Khaushlani Advocate for the complainant  
Shri Rohan Gupta Advocate for the respondent no. 1  
Shri Gaurav Dua Advocate for the respondent no. 2

**ORDER**

1. The present complaint dated 17.06.2021 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(5) 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 | "Paradise" at Village Ullahawas, Sector 62, Gurugram                          |
| 2.     | Nature of the project            | Affordable group housing project  |
| 3.     | Project area                     | 5.06875 acres   |
| 4.     | DTCP license no.                 | 5 of 2016 issued on 30.05.2016 valid upto 29.05.2021                          |
| 5.     | Name of Licensee                 | M/s Pivotal infrastructure Pvt. Ltd.  |
| 6.     | RERA Registered/ not registered  | Registered vide no. 178 of 2017 issued on 01.09.2017 up to 29.05.2021         |
| 7.     | Apartment no.                    | 506, 5 <sup>th</sup> floor, T-7<br>[annexure C/3 on page no. 29 of complaint] |
| 8.     | Unit measuring                   | 303 sq. ft.<br>[annexure C/3 on page no. 29]                                  |



|     |   |  |
|-----|---|--|
|     |   | of complaint]  |
| 9.  | Date of allotment letter                    | 30.11.2016<br>[annexure C/2 on page no. 20 of complaint]   |
| 10. | Date of execution of Flat buyer's agreement | 03.11.2017<br>[annexure C/3 on page no. 25 of complaint]   |
| 11. | Date of sanction of building plans          | 25.07.2016<br>[annexure R-2 on page no. 21 of reply]   |
| 12. | Date of environment clearance               | 28.07.2017<br>[page no. 25 of reply]   |
| 13. | Tripartite agreement                        | 13.10.2017<br>[page no. 46 of reply of respondent no. 2]   |
| 14. | Total consideration                         | Rs. 13,30,972/-<br>[as per statement of account on page no. 41 of reply]   |
| 15. | Total amount paid by the complainant        | Rs. 4,81,925/-<br>[as per statement of account on page no. 41 of reply]  |
| 16. | Due date of delivery of possession          | 28.07.2021<br>[calculated from the date of environment clearance as it is later than the date of sanction of building]   |
| 17. | Possession clause                           | <b>8. POSSESSION</b><br>8.1 "The company shall endeavour to complete the construction and handover the possession of the said apartment within a period <b>of 4 years from the date of grant of sanction of building plan for the project or the date of receipt of all the environmental clearances necessary for the</b> |



|     |                           |   |
|-----|---------------------------|---|
|     |                           | 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.” |
| 18. | Cancellation letter dated | 14.05.2021<br>[page no. 89 of complaint]  |

**B. Facts of the complaint**

3. That the respondent no. 1 is in the business of construction, real estate and equipping group housing colony and invited applications for the allotment of flats under the affordable housing policy, 2013 for the project named 'Paradise' in sector 62, Gurugram.
4. That the complainant paid a booking amount of Rs. 62,050/- being 5% of the total sale consideration.
5. That complainant was successful in the draw and was allotted one BHK unit vide allotment letter dated 30.11.2016 against unit no.506, ad-measuring carpet area of 303 sq. ft. having separate balcony of 58 sq. ft. with one two-wheeler parking situated at 5<sup>th</sup> floor, tower T-7 for the total sale consideration of Rs. 12,41,000/-.
6. A apartment buyer's agreement was executed between complainant and respondent/builder on 3.11.2017. After that the complainant preferred to get the allotted unit financed and opted to avail housing loan of Rs. 10 lacs.



Consequently, respondent no.1 recommended the complainant to avail the housing loan from respondent no.2 which had been nominated it and is a reputed finance company.

7. That complainant applied for the home loan which was approved by respondent no.2 vide sanction letter dated 3.10.2017. Subsequently a tripartite agreement was also executed on 24.10.2017.
8. That respondent no.1 without adhering to the norms and in total violation of affordable housing scheme and obtaining environmental clearance qua the project raised the 2nd payment demand which was brought to the notice of senior town planner, Gurugram, Haryana in reference to complaint/ representation lodged by the complainant before Chief Minister's office on 09.01.2017 wherein it was undertaken by the representative of respondent no.1 as also reproduced in the order dated 16.02.2017 passed by District Town Planner, Gurugram, Haryana that the allotment money and subsequent payment demands would be raised in compliance to the terms of "affordable housing scheme" and only after getting the environmental clearance and suspended the 2nd payment demand assuring the complainant to remit the same as and when an intimation given to him granting "environmental clearance" shall be given.
9. That the respondent no. 1 demanded a payment of Rs. 2,48,200/- in terms of 2<sup>nd</sup> payment instalment i.e., 20% of the total sale price owing to grant of environmental clearance



somewhere in July 2017 hence, out of the total payment demand a sum of Rs.62,050/ was paid by the complainant on 11.08.2017; whereas balance sum of Rs.1,86,510/- as disbursement of loan by respondent no.2 on dated 25.11.2017.

10. That another demand of Rs. 1,67,535/- which was to be raised within six months from the date of allotment was prematurely raised vide demand letter dated 28.01.2018 which received to the complainant only on 28.04.2018 through mail wherein it was also mentioned by the representative of respondent no.1 that there has been a delay in sending the said payment demand due to some technical error. Hence, no interest shall be charged for such delay.
11. That respondent no.1 without commencement of construction with respect to tower has itself admitted in mail dated 12.02.2019 that the work at the site with respect to such tower would be started by the end of year 2019 but, respondent no.1 even without commencement of construction continued to raise payment instalments. Though, as per the arrangements made between respondent no. 1 & 2 the project was approved for a housing loan; pursuant thereto the complainant opted for a housing loan from respondent no.2. Hence, the complainant cannot be held responsible owing to any uncertainty or internal disturbances amongst respondent no. 1 & 2 which had led to non-disbursal of loan amount.



12. That since all the subsequent instalments in terms of payment demands raised by the respondent no.1 were to be disbursed by the respondent no.2. Thus, the complainant for the sake of convenience forwarded the payment demands but, respondent no.2 refused to disburse any of the payment instalment/demand stating that the construction at the site had even not been started alleging that this fact had also been informed to the respondent no.1. Hence, such redundant payment demands as raised by the respondent no.1 are in violation of agreement.
13. That complainant repeatedly followed-up personally with representatives of the respondent no.1 and also through repeated letters/mails on 03.05.2018, 20.12.2018, thereafter on many occasions/mails including of dated 19.01.2019, 04.07.2019 and 09.07.2019 requesting to respond and to find out a solution and to resolve the issue if, any with the respondent no.2. The respondent no.1 informed the complainant that they are in constant touch with the concerned officials of respondent no.2 and assured that soon, the construction shall be started hence, complainant should not bother and would not be burdened with any penal/late payment charges or would face any untoward act or cancellation from the side of respondent no.1.
14. That it is pertinent to mention that the complainant could not be termed as defaulter in remitting the payment of instalments. Rather the complainant made all his efforts who was completely stuck between the respondents. It was also



pointed out to the respondent no.1 that at the time of availing the loan it was suggested by respondent no.1 itself to prefer respondent no.2 as the respondent no.1 had tie-up with them as the project had been approved by the respondent no.2. The correspondence exchanged between complainant and respondents make it crystal clear the nefarious act of both of them leaving complainant in a lurch.

15. That complainant after constant follow-ups with representative of respondent no.2 and also through multiple mails of dated 03.05.2018, 08.05.2018, 18.05.2018, 26.07.2018, 11.08.2018, 03.11.2018, 07.12.2018, 26.09.2019, 04.01.2020, 14.01.2020, 15.01.2020 & again requested for the disbursal of payment instalments but, as re-iterated by the respondent no.2 in reply/mail dated 30.09.2019 & on 21.01.2020 that all payment demands as also earlier informed are still on hold and cannot be released by the respondent no.2 due to non-progress of construction work.
16. That for the demands dated 25.03.2021 and 09.04.2021 the complainant again wrote letters to the respondent no. 2 for disbursal of loan amount dated 11.05.2021, 21.05.2021, 22.05.2021 and 27.05.2021 but the respondent no. 2 never paid amount.
17. That the complainant received the demand letter dated 14.05.2021 along with the letter of cancellation directing complainant to pay the entire amount within a period of 15 days along with delayed penalty charges failing which to face cancellation of unit.





18. That separate publication in newspaper "Dainik Bhaskar" dated 3.6.2021 had revealed the "defaulter's list" wherein unit pertaining to the complainant had also been mentioned by respondent no.1. The complainant had also separately received final payment reminder purported to be of dated 3.6.2021 directing him to remit the total principal outstanding of Rs.8,53,1877 within 15 days with separate penal charges/delayed interest claimed to be of Rs.2,54,906/-
19. That the respondent no. 1 is solely responsible for the delay in start of construction which can be seen from the photographs of the site taken by the complainant upon his visit on 14<sup>th</sup> April 2021 and surprised to note that such tower has not been raised and only skeleton structure up to the 4<sup>th</sup> floor had only been constructed.

**C. Relief sought by the complainant:**

20. The complainant has sought the following relief:
- (i) Restrain the respondent no.1 from cancelling the unit in question.
  - (ii) Direct the respondent no. 1 recall/ withdraw the delayed interest charges of Rs. 2,54,906/- as claimed in the final payment reminder letter dated 03.06.2021 and also, not to claim any further delayed charges.
  - (iii) To conduct enquiry and sought reason from respondent/s so, that loan amount qua the unit in question shall be disbursed.

(iv) To sought as to whether compliance report under section 4(2)(1)(D) of the Act, 2016 for financial year 2018-2019 in reference to show cause notice dated 07.09.2020 issued by this authority had been done by the respondent no. 1.

21. 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(5) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1**

22. That the authority does not have the power and jurisdiction to entertain and adjudicate the present complaint in accordance with the provisions of Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate Rules, 2017.

23. That the complainant has failed to make payments of instalments with effect from 28.07.2018. That the statement of account clearly shows that the complainant had not paid a single instalment with effect from 28.07.2018 and had only paid 37.05% of the total basic sale price against the demands raised by the respondent no. 1.

24. That the cancellation letter was sent to the complainant on 14.05.2021 through which he was informed that due to his failure of payment of due instalments and the outstanding amounts, his allotment would be cancelled. Even in advertisement published on 03.08.2016 by the respondent



- no. 1, he was given 15 days from the date of publication to make the outstanding dues cleared. Since, he failed to make the payment of outstanding dues within 15 days from 03.08.2021, his allotment stood cancelled on 18.06.2021.
25. That as far as the status of construction and completion of the project is concerned, the respondent no. 1 had received the sanctions of building plans on 25.07.2016 and had further received the environmental clearance on 28.07.2017.
26. That the respondent no. 1 is having the time period for delivery of possession of the project till 29.11.2021 taking into account the order dated 26.05.2020 passed by this authority granting extension of the RERA registrations for a period of six months due to lockdown measures owing to pandemic of covid-19. The project comprises 7 towers out of which the respondent no. 1 commenced construction of 4 towers in phase-I and construction of tower T-7 was planned to commence in phase-II. The respondent no. 1 had the obligation to complete the entire project within 4 years from the date of approval of building plans or approved environmental clearance, whichever is later. The construction of all the towers in one go is not possible. Hence, the construction of towers of a project is planned in phases.
27. That the complainant had applied for the allotment of a flat in the affordable group housing after fully understanding that he was to make the payment of entire sale consideration in quarterly instalments as per the time-linked payment plan and the same was not construction-linked. Further the

complainant is also bound by the terms of the agreement dated 03.11.2017 wherein as per clause 21, he clearly admitted that the allotment of the unit was not consequent to the payment of the due instalments by any financial institution and the complainant shall be liable to pay the due instalments as per the terms of the allotment.

**E. Reply by respondent no. 2**

28. That the present complaint is not maintainable as the same is totally false, frivolous and devoid of any merit against the answering respondent. The complaint under reply is based on assumption, presumption and conjuncture and surmises.
29. That the present complaint is not maintainable qua the respondent no. 2 being the financial institution registered under the provision of the National Housing Bank Act, 1987 and presently governed by Reserve Bank of India and the authority has no jurisdiction to deal with any matter in respect of financial institutions. Thus, the present complaint is liable to be dismissed on this ground. The respondent no. 2 is not the developer of the project, nor a real estate agent and nor the promoter of the real estate project and therefore not liable for any real estate related liability arising under RERA.
30. That the respondent no. 2 is a housing finance company and is engaged in the business of providing loan facility to its customers against mortgage of property. It is well established financial company and has earned par excellence in the market. The complainant has approached the respondent no. 2 for availing of loan facility against mortgage of residential

Unit in question. Consequently, based upon the representations made by the complainant and documents furnished, the respondent no. 2 sanctioned a loan of Rs. 10,00,000/- vide loan agreement dated 13.10.2017. The tripartite agreement was executed between the parties on 24.10.2017.

### **F. Jurisdiction of the authority**

31. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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**

32. 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**

33. Section 11(5) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(5) is reproduced as hereunder:

#### **Section 11(5)**

*The promoter may cancel the allotment only in terms of the agreement for sale.*

*Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.*

**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.*

34. 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.

**F. Findings on the objections raised by the respondent.**

**F.I Objection regarding untimely payments made by the complainant.**

35. The respondent no. 1/ promoter has alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments which led to the cancellation of unit. The authority is of view that the respondent cannot take advantage of this objection of untimely payments being himself at wrong firstly by not completing the construction. As per the tripartite agreement the financier has to made payment on behalf of allottee to the builder as per the stage of construction and

the demand raised by the builder is not in accordance with the stage of construction.

**G. Findings on the relief sought by the complainant.**

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

**i. Restrain the respondent no.1 from cancelling the unit in question.**

36. In the present complaint, the complainant intends to retain the unit and does not want to withdraw from the project. In view of the same the present complaint has been filed before the authority.
37. The complainant vide allotment letter dated 30.11.2016 allotted one BHK unit/flat in tower T-7, in the project "Paradise" situated at sector-62, Gurugram. Thereafter, the complainant preferred to get the allotted unit financed and opted to avail a housing loan of Rs. 10 lakhs. Consequently, on the recommendation of respondent no. 1, complainant availed the housing loan from the respondent no. 2 as the project was approved for the purpose of housing loan.
38. Thereafter, complainant applied for the home loan which was sanctioned on 03.10.2017 and accordingly tripartite agreement was executed on 24.10.2017. After remitting 2<sup>nd</sup> payment instalment the respondent no. 2 did not disburse the loan amount against payment demands raised by the respondent no. 1 on the pretext that the construction pertaining to the tower where unit of the complainant had



been allotted had been started by the respondent no. 1. Thereafter, respondent no. 1 owing to the non-payment of the said demand/ instalment had issued final demand letter on 03.06.2021 and also published in daily newspaper directing to remit the payment instalment failing which unit of the complainant would be cancelled by 16.06.2021. The authority is of the view that the demand letter dated 03.06.2021 was not as per affordable housing policy, 2013 as no amount was refunded to the complainant after forfeiture of Rs. 25,000/-. Clause 5(i) of the affordable housing policy, 2013 is reproduced below for ready reference:

**Clause 5(iii) (i) of the affordable housing policy:**

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also **an amount of Rs 25.000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant.** Such flats may be considered by the committee for offer to those applicants falling in the waiting list"*

39. That the tripartite agreement has been executed between the parties on 24.10.2017 & the payments has to be made as per tripartite agreement. Clause 4 of the tripartite agreement is reproduced below for ready reference.





*"4. That IHFL shall disburse the loan as per the stage of construction of the project may warrant as assessed by IHFL in its sole discretion and such decision being full and final."*

40. So, in view of contractual obligations entered into between the parties, the financier was entitled to disburse the loan as per the stage of construction of the project to the builder on behalf of allottee. Since the demand raised by the respondent no. 1 was not in accordance with the stage of construction therefore, respondent no. 2 did not remit the remaining amount of the loan and accordingly, the cancellation of the allotted unit is set aside by the authority for non-default on part of the complainant.
41. That the project was to be completed by 28.07.2021. But so far, the promoter has not completed the construction and also failed to meet timelines of various stages of construction. Till date only structure work is complete up to 10<sup>th</sup> floor. There is grave default on the part of promoter.
- ii. Direct the respondent no. 1 recall/ withdraw the delayed interest charges of Rs. 2,54,906/- as claimed in the final payment reminder letter dated 03.06.2021 and also, not to claim any further delayed charges.**
42. The complainant has alleged that the respondent has raised the demand of interest of Rs. 2,54,906/- in the final demand letter dated 03.06.2021. The promoter would issue fresh demand strictly as per policy and if the allottee has any objection to any of the demand, he may approach the authority or the licensing authority or any of their



subordinate office. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% 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. Therefore, the respondent shall not charge anything which is not part of buyer's agreement.

**iii. To conduct enquiry and sought reason from respondent/so, that loan amount qua the unit in question shall be disbursed.**

43. The above-mentioned relief sought by the complainant was not pressed by the complainant counsel during the arguments. Similarly, no specific details have been provided. Therefore, the authority is of the view that the complainant does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

**iv. To sought as to whether compliance report under section 4(2)(l)(D) of the Act, 2016 for financial year 2018-2019 in reference to show cause notice dated 07.09.2020 issued by this authority had been done by the respondent no. 1.**

44. The authority is of the view, that planning branch of the authority is directed to take up the matter to conclusion as already matter is being dealt separately.

45. 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(5) of the Act,2016. The complainant has availed the housing loan from the respondent no. 2. After remitting 2<sup>nd</sup> payment instalment the respondent no. 2 did not disburse the loan amount against payment demands raised by the respondent no. 1 on the pretext that the construction pertaining to the tower where unit of the complainant had been allotted had been started by the respondent no. 1. Thereafter, respondent no. 1 owing to the non-payment of the said demand/ instalment had issued final demand letter on 03.06.2021 and also published in daily newspaper directing to remit the payment instalment failing which unit of the complainant shall be cancelled by 16.06.2021. The authority is of the view that the demand dated 03.06.2021 was not as per affordable housing policy, 2013 as no amount was refunded to the complainant after forfeiture of Rs. 25,000/-.

46. So, as per the contractual obligations entered into between the parties, the financier was liable to disburse the loan as per the stage of construction of the project to the builder on behalf of allottee. Since, the demand raised by the respondent no. 1 was not in accordance with the stage of construction therefore, respondent no. 2 did not remit the remaining amount of the loan and accordingly, the cancellation of the allotted unit is set aside by the authority for non-default on part of the complainant.
47. Further for the demand of interest raised by the respondent no. 1 from the complainant the authority is of the view that it



would raise fresh demand to him strictly as per policy and if the allottee has any objection to any of the demand, he may approach the authority or the licensing authority or any of their subordinate office. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% 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. Therefore, the respondent shall not charge anything which is not part of buyer's agreement.

**H. Directions of the authority**

48. 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 cancellation of the allotted unit is set aside for the non-default on the part of the complainant.
  - ii. The respondent is directed to issue fresh demand letter. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% 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.

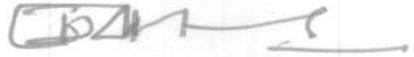


- iii. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.
- iv. The planning branch of the authority is directed to take up the matter separately.

49. Complaint stands disposed of.

50. 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**