



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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1. COMPLAINT NO. 149 OF 2018

Satya Veer SinghCOMPLAINANT

VERSUS

Piyush Buildwell India Ltd.RESPONDENT(1)

Piyush Heights Residents Welfare AssociationRESPONDENT(2)

2. COMPLAINT NO. 758 OF 2018

Satya Narayan GuptaCOMPLAINANT

VERSUS

Piyush Buildwell India Ltd.RESPONDENT (1)

Piyush Heights Residents Welfare AssociationRESPONDENT(2)

CORAM: **Rajan Gupta** **Chairman**
 Dilbag Singh Sihag **Member**

Date of Hearing: 12.05.2022

Hearing: 26th

Present: Mr. Akshat Mittal, learned counsel for the complainants
Mr. Gaurav Singla, learned counsel for the respondent no.1
through VC
Mr. Roop Singh, counsel for Piyush Heights RWA,
respondent no.2

ORDER (RAJAN GUPTA-CHAIRMAN)

When captioned complaints were heard on 02.02.2022,
Authority had passed following orders: -

Captioned complaints have similar facts and grievances, therefore, both complaints have been heard together. Facts of complaint no. 149 of 2018 are being taken into consideration.

2. The facts of lead complaint No.149 of 2018 are that complainant purchased an apartment on 10.09.2007 in the project namely, 'Piyush Heights', Sector-89, Faridabad of respondent company, which was originally booked by Mr. Rakesh Kumar Yadav on 02.12.2006. Builder-Buyer agreement was executed between the parties on 10.10.2007, copy of which is placed at Annexure-3(A-S). As per agreement, deemed date of possession was within 36 months from the date of signing of agreement i.e. up to 10.10.2010. The complainant regularly paid all the instalments as per demands made by respondent, and till date, he has paid an amount of ₹24,92,747/- against sale price of ₹24,76,894/-. An offer of possession was received by the complainant from the respondent promoter on 28.09.2017 along with statement of accounts in which it has been shown that an amount of ₹24,92,747/- stand paid and an amount of ₹9,76,978.76/- remains to be paid.

3. Today is 24th hearing of the matter. The complainants have already taken possession of their respective apartments through RWA and District Magistrate. Now, the prayer of complainants is to get conveyance deeds executed in their favour.

4. Respondents have submitted a short reply in which they have alleged that documents annexed by complainants with their complaints as proof of payments having been made are forged documents. Further, the document vide which possession was allegedly handed over to the complainants is also forged one. It was also alleged that complainants have taken possession forcibly with the help of Resident Welfare Association. Further, some amount still



remains to be paid by complainants, hence, conveyance deeds cannot be executed without obtaining those payments from the complainants. It was further stated by learned counsel for respondent that one director of the respondent company Shri Puneet Goel has expired and other Director is in jail. Moreover, entire record of respondent company is in the custody of Enforcement Directorate, therefore it is not possible for respondents to produce documentary evidences in support of their allegations at this stage that complainants have submitted forged documents with the complaints.

Learned counsel for respondents Shri Gaurav Singla further stated that other Director of the respondent's company who is in jail is likely to get bail soon. He pleaded that at this stage, Authority should not pass orders for execution of conveyance deeds in favour of complainants.

5. Further, complainants have impleaded Piyush Heights RWA as respondent no.2 on the ground that RWA has been causing hindrance in getting electricity connection and demanding maintenance charges illegally. Mr. Roop Singh, who marked his presence on behalf of the RWA, namely, Piyush Heights Residents Welfare Association (respondent no.2), has already filed his reply and stated that relief sought by complainants is a dispute between complainants and respondent no.1. The RWA has no role in respect of any transactions held between both parties. A valid offer of possession was made to the complainants in September 2017, therefore, complainants are liable to pay maintenance charges to respondent no.2 with effect from 01.04.2018 i.e. the date from which RWA took over charge of members of colony.

Further, complainants have also placed on record estimate of expenditure to be required to rectify deficiencies in their apartments along with list of deficiencies which amounts to ₹2,88,667/-.

6. The Authority has gone through the facts placed on files as well as the verbal submissions made by ld. counsel for complainants as well as arguments put-forth by ld. counsel for respondent and RWA. The Authority observes and decides as follows: -

- i. Admittedly project is complete. Occupation certificate has already been received and complainants have paid an amount of ₹24,92,747/- against total sale consideration amount of ₹24,76,894/-. A statement of

accounts supplied by respondents' company was attached in which it has been shown that an amount of ₹24,92,747/- stand paid and an amount of ₹9,76,978/- remains to be paid on account of certain components. Complainants did not take possession due to such illegal demands. Moreover, possession of the apartments was handed over to the complainants through RWA and District Magistrate. In these circumstances, Authority is of the view that charges which as per law are payable shall be paid by the complainants to the respondents.

However, since no justification has been provided by respondents in respect of additional charges, Authority prima facie is of the view that complainants are entitled to get conveyance deeds executed in their favour but before deciding it on merit, one more opportunity is given to the respondents to justify the demand of ₹9,76,978/-. It is the responsibility of the respondents to prove their case. They may obtain a copy of original records and produce before this Authority in support of their contentions.

ii. Learned counsel for respondent also argued that holding charges for certain period are pending against the complainants. Authority observed that holding charges is a concept which facilitate compensating the builders for the period during which an allottee had not taken the possession of an apartment after legal offer of possession had been made. Neither any justification of such charges has been given by the respondent nor any documentary evidence placed on record. Accordingly, the Authority will not take cognizance of mere verbal statement of ld. counsel of respondent that conveyance deeds are not being executed for want of payment of holding charges.

iii. Regarding issue of maintenance charges raised by Piyush Heights Residents welfare Association, Authority has already passed a detailed order dated 05.10.2021, operative part of which is reproduced below for ready refence:

3. The moot question before Authority is that whether offer of possession given in September 2017 by the respondent to the



allottees was good or not. The respondent had offered possession in September 2017 accompanied with certain unjustified demand of about ₹9 lacs due to which the complainants had refused to take possession.

4. On consideration of pleadings and documents available on record, Authority is of the considered view that complainants had obtained possession on as and where basis through office of the District Magistrate. The apartments were partly incomplete even when possession was taken through the office of District Magistrate. It has been estimated by the complainants that an amount of ₹2.88 lacs is required to be spent to make the apartments habitable. Respondent had not given possession to the complainants.

On face of available record, it can therefore be stated that the offer of possession made to the complainants was not a good offer in September 2017 because of disputed demands and the apartments being not habitable. Therefore, complainants are not liable to pay any maintenance charges to the RWA for the period prior to taking over of possession through District Magistrate. The maintenance charges for the disputed period however may be recovered by the RWA from the respondent/promoter as per law. RWA is therefore directed not to create any hindrance to the complainants from enjoying possession of their property.

7. Cases are accordingly adjourned to 12.05.2022 for further arguments.

2. Respondent no.1 has filed reply and has submitted that the complainant has failed to pay full sale consideration of the flat as per builder buyer agreement. The respondent further stated that he is always willing to



execute conveyance deed subject to payment of outstanding dues by the complainant. Respondent also stated that documents presented by complainants in support of their claim are fabricated and forged. However, nothing at all has been placed on record by respondent no.1 in support of their contentions. Authority had cast a responsibility on the respondent to produce evidence in support of his arguments that complainants have placed forged documents before the Authority. Statements unsubstantiated by evidence cannot be accepted. Respondent has failed to produce any evidence or documents in support of their arguments.

3. Today, Mr. Roop Singh marked his presence on behalf of Piyush Heights RWA, respondent no.2, stating that he had filed an appeal before Hon'ble Appellate Tribunal and the same has been dismissed as withdrawn on an undertaking given by learned counsel for complainants that they are ready to pay maintenance charges within two weeks from the date when actual possession is handed over, and RWA will not create any hindrance in providing basic facilities like electricity, water and sewerage connection etc.

4. In view of above facts, Authority observed that dispute qua complainants and respondent no.2 stands resolved vide order dated 12.05.2022 passed by Hon'ble Appellate Tribunal and order dated 02.02.2022 passed by this Authority. It is further clarified that RWA is entitled to recover maintenance

charges from complainants with effect from the date of actual taking over of physical possession of the flats by the complainants.

5. As far issue of execution of conveyance deed is concerned, Authority is of considered view that complainants have already taken possession with the help of RWA in the year 2021 and are enjoying the same. On perusal of record submitted by both parties, it has come to the knowledge of the Authority that there is dispute regarding payments of balance sale consideration of ₹9,76,978/- in complaint no. 149 of 2018 and ₹16,80,478/- in complaint no. 758 of 2018 which was demanded by the respondent along with offer of possession dated 28.09.2017. Neither any proof/receipts of payments regarding these demands have been placed on record by the complainants nor has been justified by respondent. Now, complainants are pressing for execution of conveyance deeds in their favour but respondent is resisting the same on account of outstanding payments towards complainants. Authority cannot order for execution of conveyance deeds at this stage as issue regarding payment of balance sale consideration remains unsettled as both the parties have failed to produce any cogent evidence in support of their assertions. Though complainants are enjoying their possession, they are entitled for execution of conveyance deed when this issue regarding statement of accounts will be resolved. Thereafter, respondent will be duty bound to participate in execution of conveyance deed after verification of payments.



6. Complainants have also prayed for delay interest for the period of delay caused by respondents in handing over possession. On perusal of facts of the cases, it has been observed by the Authority that respondent was under obligation to hand over possession up to 10th October 2010 in complaint no.149 of 2018 and up to 19.12.2012 in complaint no. 758 of 2018. However, offer of possession was made on 28.09.2017 in both cases after delay of approximately seven years and five years respectively from deemed date of possession along with demand of ₹9,76,978/- in complaint no. 149 of 2018 and ₹16,80,478/- in complaint no. 758 of 2018. Complainants did not take possession due to said alleged demands. They had taken over possession of their respective apartments on January 2021. Therefore, Authority is of the considered view that complainants are entitled for delay interest for the period of delay caused in handing over possession from deemed date of possession till the date of actual taking over possession i.e. from October 2010 to January 2021 in complaint no. 149 of 2018 and from December 2012 to January 2021 in complaint no. 758 of 2018. Authority has got calculated delay interest from its account branch for the above said periods as prescribed in Rule 15 of the HRERA Rules 2017 i.e. SBI MCLR plus 2% (9.30%) payable to both the complainants in each case which comes to ₹23,73,512/- in complaint no.149 of 2018 and ₹17,09,196/- in complaint no.758 of 2018. It is further clarified that charges which as per law are payable, shall be paid by the complainants to the respondent. Respondent is directed to adjust the amounts of interest with the outstanding dues, if any, pending against




the complainants as per law. If any dispute remains pending between both the parties, they are at liberty to approach the Authority again.

7. Cases are **disposed of** accordingly. Files be consigned to record room.



(RAJAN GUPTA)
CHAIRMAN



(DILBAG SINGH SIHAG)
MEMBER

