



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>896 of 2020</b>
<b>Date of filing:</b>	<b>22.09.2020</b>
<b>Date of first hearing:</b>	<b>19.11.2020</b>
<b>Date of decision:</b>	<b>30.05.2023</b>

Preeti Mittal w/o Mr. Sandeep Mittal,  
R/o House no. 212, Sector-9, Faridabad.

....COMPLAINANT

VERSUS

M/s Piyush Buildwell India Ltd. through its Managing Director,  
Corporate Office: Piyush Global-1, Plot no.5, YMCA Chowk,  
NH-2, Main Mathura Road, Faridabad.

Regd. Office: A-16/B-I, Mohan Cooperative Estate, Mathura Road,  
New Delhi-110044.

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present:**

Mr. Tanmay Gupta, Id. counsel for the complainant  
Mr. Gaurav Singla, Id. Counsel for the respondent  
through VC



**ORDER (NADIM AKHTAR-MEMBER)**

Present complaint dated 22.09.2020 was filed by complainant before the Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS:**

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

S. No.	Particulars	Details
1.	Name of project	Piyush Heights, Sector-89, Faridabad.
2.	Nature of the Project	Group Housing Project
3.	RERA registered/not registered	Un-registered
4.	Allotment letter dated	25.03.2014
5.	Unit No. and area	P-1014, 1268 sq. ft. 10 <sup>th</sup> floor, P-Block
6.	Builder Buyer Agreement	25.03.2014 as mentioned in pleadings
7.	Total Sale Consideration	₹45,75,134/-





8.	Paid by the complainant	₹45,75,134/- (copy of receipt attached at Annexure C/3)
9.	Deemed date of possession	25.09.2017 as mentioned in pleadings (clause 27(a) of the agreement)
10.	Offer of possession	Not offered
11.	Occupation certificate	Not mentioned
12.	Delay in handing over of possession	5 years 8 months

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT:**

3. Case of the complainant is that she was allotted a unit bearing no. P-1014 having an area of 1268 sq. ft on 25.03.2014 in the project named as 'Piyush Heights', Sector 89, Faridabad. Complainant stated that he had paid entire sale consideration of ₹45,75,134/-. Receipt of all the payment made has been attached at Annexure C/3 at Page no.38 of complaint book. Builder Buyer Agreement of the said flat allotted to the complainant was executed between the parties on 25.03.2014, copy of which has been annexed at Annexure C/1 at page 17-35 which is not signed by the respondent. As per clause 27(a) of the agreement, possession of the unit was to be handed over to complainant up to 25.09.2017 i.e., within 36 months from the date of execution of agreement along with grace period of 6 months. Despite receiving 100% payment, respondent has failed to perform its duty to hand over possession or refund of the paid amount till date. On the strength of having made the full payment,





complainant is praying for immediate possession of the unit along with delay interest.

**C. RELIEF SOUGHT:**

4. The complainant in her complaint has sought following reliefs:
- i. To direct the respondent to give immediate possession of the unit along with delay interest at prescribed rate of interest per annum.
  - ii. Or in alternate to direct the respondent to refund entire amount paid by the complainant along with interest as per Act,2016 from respective date of payments till actual realisation.
  - iii. To direct the respondent to pay ₹10,00,000/- as compensation for causing mental agony, harassment.
  - iv. To direct the respondent to pay litigation cost of ₹2,00,000/-.
  - v. Any other relief which is deemed fit and proper by this Hon'ble Authority.

**D. REPLY:**

5. Respondent has submitted a short reply in which respondent has admitted the booking of the unit bearing no. P-1014 in the project namely, Piyush Heights, sector-89, Faridabad. Respondent submitted that entire amount has not been paid by the complainant. There are outstanding dues of ₹11,90,682/-. Respondent has no objection/hesitation for execution/registry of



conveyance deed in favour of complainant if the complainant agrees to pay outstanding dues along with holding charges up to the year 2021 and maintenance charges up to 2018 both along with interest. The complainant never approached the respondent for this purpose and therefore, due to fault of complainant in not to approach the respondent, she is liable to pay holding charges.

6. Further, learned counsel for respondent stated that many FIRs were lodged against Directors of the respondent company. They were arrested in the year 2018. After arrest of directors of respondent company, RWA was formed which illegally handed over possession of apartments to the allottees fully knowing the fact that certain payments were still due against the allottees. Respondent has also alleged that documents annexed by complainant with her complaint as proof of payments having been made and possession being handed over are forged documents. Further, one Director of respondent company Shri Puneet Goel has expired. Moreover, entire record of the respondent company is in the custody of Enforcement Directorate and it is not possible for the respondent to produce documentary evidence in support of their allegation that complainant has submitted forged documents with the complaint.





**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:**

7. During oral arguments learned counsel for the complainant insisted upon possession of the unit along with delay interest. Learned counsel for the respondent reiterated arguments as were submitted in written statement.

**F. ISSUES FOR ADJUDICATION:**

- i. Whether complainant is entitled to possession of the unit along with delay interest?

**G. OBSERVATIONS OF THE AUTHORITY:**

8. Authority has gone through the facts placed on file as well as submissions made by learned counsel for the complainant as well as learned counsel for the respondent. It is observed by Authority that case of the complainant is that a unit bearing no. P-1014 was allotted to her after paying total sale consideration of ₹45,75,134/-. In support of her pleading, she has attached copy of receipt dated 29.03.2014 issued by the respondent.

9. It is further observed that respondent has filed only a standardised reply denying in broad terms the payments having been made by complainant and an amount of ₹11,90,682/- is outstanding towards complainant. Nothing at all has been placed on record by respondent in support of its arguments. Respondent has tried to state that documents presented by complainant are





forged. It is further observed that in the previous hearing, Authority had cast a responsibility on the respondent to provide documents in support of its contentions and to provide status of construction of the project along with status of occupation certificate. Learned counsel for respondent stated that entire record of the respondent company is lying with Enforcement Directorate and IRP. He stated that several requests have been made to them to provide records related to complainants/allottees but all in vain. Statements unsubstantiated by evidence or documents cannot be accepted. Respondent has been granted sufficient opportunities to produce documentary evidence in support of its contentions. No document has been placed on record by learned counsel for respondent despite availing sufficient opportunities. Learned counsel for the complainant has already placed on record the receipt dated 29.03.2014 proving that the total sale consideration as demanded by the respondent, has already been paid. Though complainant has paid entire consideration amount, possession has not been handed over to her. She cannot force to wait more for her relief. Accordingly, Authority will not take cognizance of mere verbal statements of counsel of the respondent that complainant has placed on record forged documents. In the light of this fact, complainant has a right to get the possession of the unit to be handed over along with delay interest and conveyance deed be executed in her favour immediately.

10. Deemed date for handing over possession would be 25.09.2017 as per version of the complainant. Respondent has failed to oblige its duty and





therefore, liable to pay delayed interest to the complainant as prescribed under Rule 15 of the HRERA Rules 2017 from deemed date of possession till the actual date of handing over possession. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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 (NCLR) 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”.*

11. 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. 30.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

12. The term ‘interest’ is defined under Section 2(za) of the Act which is as under:

*(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;*

13. The Authority has got calculated delay interest from deemed date of possession till date of order i.e., from 25.09.2017 till 30.05.2023 which comes to ₹27,81,656/-.

#### **H. DIRECTIONS OF THE AUTHORITY:**

14. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:


i. Authority accordingly orders respondent to hand over possession of the unit and execute conveyance deed in favour of complainant and transfer clear title in respect of the unit along with payment of ₹27,81,656/- as delay interest.

ii. It is also ordered that further interest will be paid by the respondent till lawful offer of possession is made to the complainant.





15. **Disposed of** in above terms. Order be uploaded on the website and file be consigned to record room.

  
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**DR. GEETA RATHEE SINGH**  
**(MEMBER)**

  
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**NADIM AKHTAR**  
**(MEMBER)**

