



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	87 of 2021
Date of filing:	17.02.2021
Date of first hearing:	20.04.2021
Date of decision:	22.08.2023

Sh. Jai Kishan Singh S/o Sh. Shesh Nath Singh
R/o 32/6, IInd Floor, Old Rajinder Nagar, Delhi-110060

....COMPLAINANT

VERSUS

1. M/s Piyush Buildwell India Ltd.
2. M/s Piyush Facility Management Private Limited
Office Address: A-16/B-1, Mohan Co-operative Industrial Estate, Main
Mathura Road New Delhi – 110044

....RESPONDENTS(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: Mr. Akshat Mittal, counsel for the complainant.
Mr. Gaurav Singla, counsel for the respondent no. 1.
None for respondent no.2.

ORDER(NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 17.02.2021 under the provisions 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 fulfill 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, proposed date of handing over the possession, delay period, if any, have been detailed in the following table :

S.No.	Particulars	Details
1.	Name of the Project	Piyush Heights, Sector 89, Faridabad, Haryana
2.	RERA registered/ not registered	Unregistered
3.	Unit No.	C-1011, 10 th floor, Tower C, booked in



		the year 2006 by erstwhile allottee.
4.	Unit area	1446.070 sq. ft.
5.	Transferred to complainant-allottee	In the year 2008
6.	Date of builder buyer agreement	02.06.2008
7.	Due date of offer of possession	As per clause 27(a) of BBA- 36 months from date of execution of BBA i.e., 02.06.2011. <i>“27. (a) That the Company shall complete the development/construction of the Flat within 36 months from the date of the signing of Agreement or within an extended period of six months, subject to force majeure conditions [as mentioned in clause (b) hereunder] and subject to other Flat Buyer(s) making timely payment or subject to any other reasons beyond the control of the Company. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of the aforesaid reasons and the Company shall be entitled to a reasonable extension of time for the delivery of possession of the said Flat to the Buyer(s).”</i>
8.	Total sale consideration	Rs.23,59,179/- (out of which Rs.19,52,195/- is for basic sale price as stated in pg. 42 of complaint file)
9.	Amount paid by complainant	Rs.31,81,965/-



10.	Offer of possession	15.09.2017
11.	Occupation Certificate	Received on 17.08.2017 w.r.t Tower-A, C, I and L of project of respondent namely "Piyush Heights".

B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANT

3. Facts of the complaint are that the respondent floated a scheme for the development of residential township to be constructed and developed on the land situated in the revenue estates of Faridabad, Haryana under the name and style of "Piyush Heights" situated in Sector 89, Faridabad, being developed and promoted by respondent no. 1 "Piyush Buildwell India Ltd."
4. That a flat bearing no. C-1011, Tower -C, on 10th Floor was booked by an original allottee in the year 2006 in project namely "Piyush Heights" of M/s Piyush Buildwell India Ltd at Faridabad, Haryana.
5. That the basic sale price of the unit was Rs. 19,52,195/- and in accordance with the payment plan, the following payments were duly made in favour of the respondents vide following receipts annexed as Annexure C-1-Colly with complaint file: -
 - Payment for an amount of Rs.3,00,000/- dated 04.03.2006.



- Payment for an amount of Rs. 3,00,000/- dated 23.11.2006.
- Payment for an amount of Rs. 6,00,000/- dated 14.03.2008
- Payment for an amount of Rs. 9,29,101/- dated 14.05.2008
- Payment for an amount of Rs. 78,088/- dated 10.11.2008
- Payment for an amount of Rs. 1,82,196/- dated 21.09.2012
- Payment for an amount of Rs. 7,92,580/- vide cheque no. 61160 dated 02.02.2018. (paid amount after offer of possession dated 15.09.2017)
- Payment for an amount of Rs. 32,500/- vide receipt dated 14.05.2008. (transfer charges)
- Payment for an amount of Rs. 25,000/- vide receipt dated 25.01.2015 as transfer charges (no receipt enclosed)

That in this way, total payment of Rs.32,39,465 has been made by complainant including transfer charges, out of which Rs.31,81,965/- has been duly and admittedly made towards the sale consideration, as and when called for by the respondents.

6. That the unit was transferred from the erstwhile-allottee to the complainant-allottee in the year 2008. The receipts qua transfer charges are annexed as **Annexure C-2-colly**.
7. That builder buyer's agreement inter-se the parties qua flat bearing no. C-1011, Tower-C, on 10th Floor in project "Piyush Heights" was duly executed on 23.04.2008. A copy of the agreement is annexed as



Annexure C-3. As per the clause 27(a) of the agreement, possession of complete unit in question was to be handed over to the allottee-complainant within a period of 36 months from the date of execution of the agreement, i.e., upto 23.04.2011.

8. That respondent promoter issued a letter dated 15.09.2017 with the subject "offer of possession for flat no. C-1011, at "Piyush Heights", sector 89, Faridabad, Haryana", without completing the construction work of the unit in question. Even till date, the unit in question is not complete and lacks on several counts, which can be verified by a local site inspection. A copy of the letter dated 15.09.2017 is annexed as

Annexure C-4.

9. That further, letter dated 15.09.2017 contained illegal, frivolous and exaggerated amounts under several heads, which are enumerated as under:

- The basic sale price of the unit in question was increased from Rs. 19,52,195/- to Rs. 21,60,431/-, in blatant denial of the agreed terms and conditions.
- The charges qua 'EDC+IDC' were illegally increased from Rs. 2,45,832/- to Rs. 4,28,036.80/-



- The charges qua Interest Free Maintenance Security were increased from Rs. 36,152/- to Rs. 44,193.39/-.
10. That apart from the above enumerated illegal charges put forth in the letter dated 15.09.2017, the same also contained unreasonable and illegal demands qua heads such as 'cooking gas connection charges', 'interest accumulated as on date', 'EEC and FFC etc.' The said increases/enhancements so effected by the respondent companies are apparent from the perusal of the letter dated 15.09.2017, as against the statement of accounts dated 24.05.2012, a copy of which is annexed as **Annexure C-5**.
 11. That size of the unit in question has also been increased arbitrarily and single handedly by the respondents from the original 1446.070 sq. ft. to a whopping 1576 sq. ft., which is liable to be set aside and not to be charged from the complainant-allottee. The said increase is not just unilateral and without the consent of the complainant-allottee, but also against the approved building plans.
 12. That complainant-allottee expressed discontent and objected to the said letter dated 15.09.2017 and asked the respondent to complete the unit in question before any such offer. However, to the utter shock and displeasure of the complainant-allottee, within a very short time of the



said letter dated 15.09.2017, it was informed that the directors of the respondent companies are behind bars due to the frauds committed. Thereafter, the complainant has been trying from pillar to post to get his grievances redressed and has tried making continuous efforts to contact the representatives of the respondent company, but in vain due to non-availability of the effective representative and due to gross inaction on their part in pursuance of the requests of the complainant.

13. That on visiting the project site, the complainant-allottee came to know that the unit pertaining to him which was on the 10th floor now became the topmost floor of the building as the 11th floor, which was supposed to be the top floor of the tower, is scrapped and not being constructed. That the complainant never wanted to take a unit and reside in any top floor and had deliberately not opted for the top floor at the time of the booking/allotment.
14. That the possession of the ready unit was to be handed over by the respondents to the complainant within a period of 36 months from the date of the agreement. The said period of 36 months for handing over the possession expired on 23.04.2011; nevertheless the respondent no. 1 has miserably failed to deliver the real possession within the said timeframe. Thus, the respondent no. 1 would not be entitled to take



benefit of the six months grace period as stipulated in the agreement, as the same could only be resorted to in cases of force-majeure and extreme situations.

15. The respondents have failed to deliver possession of the unit in question even after more than 13 years of the payment of booking amount towards the same, more than 12 and a half years of execution of the builder buyer's agreement qua the same, and more than 9 years of the due date of possession, not to forget, that the delay is continuing.
16. That further, vide statement of account dated 02.02.2018, an amount of Rs. 7,92,576.51/- was shown as 'balance due amount'. Though the amount being charged by the respondent is being disputed by the complainant allottee, the complainant paid the said due amount on 07.02.2018 on assurances that the grievances would be settled and that the unit would be completed and handed over immediately after rectification of the deficiencies. However, not only has the said promise not been complied with by the respondent company, instead the respondent no. 1 vide the statement of accounts dated 15.11.2019, raised additional demands under the heads of 'interest accumulate as on date' and 'holding charges with taxes', and as such, after paying all



the instalments as asked for earlier and balancing the total accounts, the complainant-allottee was charged an additional amount of Rs. 2,90,853.77/-. The statement of account/demands dated 02.02.2018 and 15.11.2019 are annexed as **Annexure C-6-colly**.

17. That the complainant who has regularly been paying all the instalments as demanded by the respondents qua the unit/floor in question has in good faith and even after the default and delay on part of the respondents, not demanded the rightful refund of his hard earned money spent on the floor in question.
18. That complainant-allottee had applied for loan from Axis Bank by placing trust upon the respondent company regarding timely and uncompromised delivery of possession of the unit in question. The complainant is thus burdened by the instalments thereof.
19. That this attitude on the part of the respondents has rendered the complainant-allottees completely shattered, heartbroken; and being highly aggrieved by the entire circumstances, the complainant is left with no other option but to approach the Authority praying for direction to the respondent for immediate offer of uncompromised possession and for compensation for the delay in possession.



20. That Authority in similar complaints vide complaint no. 149 of 2018 had been pleased to direct the respondent to rectify the deficiencies in the apartments and hand over fresh possession to the complainants therein.
21. That complainant-allottee is, in utmost good faith, even at this juncture, not seeking withdrawal from the project; nevertheless it is clear that in view of the above entailed facts, the respondents have committed sheer breach of the provisions incorporated under the Act, for which the complainant deserves to be held entitled to an adequate relief as deemed fit and proper by the Authority, along with directions to the respondents for immediate handing over of possession after rectification of the deficiencies thereto.

C. RELIEF SOUGHT

22. In view of the facts mentioned above, the complainant has prayed for the following relief(s):-
- (i) To direct the respondents to immediately hand over the physical possession of the unit in question to the complainant allottee, after rectifying all the deficiencies thereto.
 - (ii) To direct the respondents to rectify all deficiencies in the unit in question and to complete the same in all respects as promised.



- (iii) To direct the respondents to withdraw the letter dated 15.09.2017 and to hand over fresh physical possession of the unit after rectification of the deficiencies and amending the demands thereto.
- (iv) To direct the respondents to compensate for the delay in offer of possession of the apartment complete in all respects, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, on the entire deposited amount of Rs. 32,39,465/- (Rupees Thirty Two Lakh, Thirty Nine Thousand, Four Hundred and Sixty Five only) which has been deposited against the property in question so booked by the complainant.
- (v) To direct the respondents to waive of the amounts being charged under the heads of 'Interest accumulated as on date', 'Holding Charges' , 'cooking gas connection charges', 'EEC and FFC etc' etc. for the reasons stated in the complaint.
- (vi) To direct the respondents to set aside the increase in charges under the heads of 'Basic Sale Price', 'EDC and IDC', 'Interest Free Maintenance Security' etc. for the reasons stated in the complaint.



- (vii) To set aside the increase in the size of the unit effected by the respondents unilaterally and contrary to the approved plans and to direct the respondents not to charge any amount qua the same from the complainant allottee.
- (viii) To direct the respondents to pay a sum of Rs. 5,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony caused to complainant along with interest from the date of filing the present complaint till its realization.
- (ix) The registration, if any, granted to the respondents for the project namely, "Piyush Heights", situated in the revenue estates of Faridabad, District Faridabad, Haryana, under RERA read with relevant Rules may be revoked under Section 7 of the RERA for violating the provisions of the Act.
- (x) The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-;
- (xi) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.



D. REPLY FILED BY RESPONDENT:

23. In present case, respondent no. 2 has neither filed its reply nor represented its case in any of the hearings. However, respondent no. 1 filed its reply on 15.11.2021 pleading therein:-

- 1) That a flat no. C-1011, Sector-89, Piyush Heights, Faridabad was allotted to the complainant and the builder buyer agreement was signed on 23.04.2008.
- 2) That the complainant has alleged to have paid the entire amount but he never paid the entire amount of the flat. That it is highly unbelievable that the person who had paid the entire amount in the year 2018 not approached the respondent for conveyance deed.
- 3) That the complainant had not paid the balance amount, i.e., principal amount, holding charges, maintenance charges, interest and other expenses.
- 4) That respondent-builder has no objection or hesitation to get registry of the said flat done if the complainant agrees to pay the balance amount including the holding charges upto 2021 alongwith interest, maintenance charges upto March 2018 alongwith interest, and other charges such as registry



charges/stamp duty etc. which are due upon the buyer/complainant.

- 5) That the complainant without paying the entire amount of the flat is claiming the possession, this shows the mal-practice on part of complainant and therefore complaint should be dismissed on this ground. Further, respondent had requested the complainant to take the possession of the said flat, pay the balance dues and to get the registry done in his favour after paying the government and other charges. However, it is the complainant who did not come forward to take possession.
- 6) Due to default on part of the complainant, respondent had to hold the flat, thus builder is entitled for holding charges.
- 7) That the directors of the company were arrested on 18.06.2018 and were in the custody till the date of filing of this reply. One of the directors namely; Mr.Puneet Goyal had expired in custody period.
- 8) That after arrest of the directors, one RWA was constituted, which illegally handed over the possession of the flat to the buyer's despite knowing the fact that payments were still due towards the allottees. As soon directors came to know about this fact, they



requested the RWA to stop all illegal practice failing which legal action will be taken against RWA. However, RWA ignored the request of the directors of the company and one complaint dated 23.10.2020 was filed to the Commissioner of Police, Faridabad for taking action against the RWA. The copy of the same is annexed as **Annexure R-1**.

- 9) That when the counsel for the respondent no. 1 received the copies of the complaints filed by the complainants, upon being verified by the directors, it was found that forged possession letters/receipts were issued by the RWA by procuring false letter heads of the company. The said forged possession letters/receipts were prepared by them despite knowing the fact that the office of the company stands already sealed by the other government authorities and whole record is with the government authorities. Regarding this allegation another complaint dated 16.08.2021 was filed by the director, Amit Goyal to the Commissioner of Police Faridabad. A copy of the same is annexed as Annexure R-2.
- 10) That respondent no. 1 is always ready and willing to perform its part and in this regard when the directors of the company were in custody, at that time also numbers of registries were done in



favour of the buyers who had paid the balance dues and this was done through public utility services.

11) In view of above submissions, it has been prayed that present complaint be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

24. During oral arguments learned counsel for the complainant and respondent no. 1 reiterated their respective arguments as stated in their written submissions. In addition, Ld. Counsel for the complainant stated that offer of possession letter dated 15.09.2017 accompanied with certain demands due to increase in area of the flat are excessive and unjustified.

Learned counsel for complainant further stated that complainant wants to take possession of his flat. However, due to some deficiencies and unjustified demands raised by the respondent, complainant did not accept the possession in 2017. Report submitted by the local commissioner on 19.06.2023, clearly depicts the condition of the apartment. Thus, he prayed for delivery of possession after rectifying deficiencies and for withdrawing the impugned demands.



25. In response, learned counsel for respondent no. 1, Mr. Gaurav Singla, stated that flat was complete in all respects and ready for usage at the time of offer of possession vide letter dated 15.09.2017. Offer of possession was made in the year 2017 after receiving the occupation certificate from DTCP, Haryana on 17.08.2017. The said certificate itself certifies that the flat has been constructed as per the approved plans, in compliance of local laws and is in habitable condition. Thereafter, in the year 2018, all the directors of the company were taken into custody by the police and their office was sealed by the government authorities. In the meantime, when directors were in the custody, complainant in connivance with RWA members, broke the locks of the flat and damaged the floor, glass, etc., and kept open the flat. Complaint dated 23.10.2020 was also filed to Commissioner of Police, Faridabad for taking action against the RWA. The default on part of the complainant can also be attributed from the very fact that complainant never communicated any deficiency in flat since 2017, nor objected the demands made in offer letter through any mode; rather complainant remained mum for so many years. Now at this stage, after expiry of more than 5 years of offer of possession, the conduct of the complainant along with RWA cannot be attributed to



the respondent-builder and is not at all justified and convincing to make respondent liable to rectify any deficiency arised in the flat with passage of time.

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

26. Authority had gone through documents on record and heard the arguments of the ld. counsels for the parties. Upon perusal of file, the Authority observes that it is not disputed by the parties that the original allottee booked a flat in the year 2006 and was allotted flat bearing no. C-1011, Tower-C on 10th floor in the real estate project "Piyush Heights" at Faridabad, Haryana, being developed by the respondent promoter namely; M/s Piyush Buildwell India Ltd., at a basic sale price of Rs.19,52,195/-; the said unit was transferred from the erstwhile allottee to the complainant in the year 2008 and the apartment buyer agreement was executed inter-se the complainant and the respondent on 23.04.2008; as per the agreement, possession of the completed unit in question was to be handed over to the complainant allottee within 36 months from the date of execution of buyer's agreement or within an extended period of six months, subject to force majeure conditions; respondent promoter offered possession of the said flat vide letter dated 15.09.2017, annexed at C-4.



27. The grouse of the complainant is that the offer of possession vide letter dated 15.09.2017 contained illegal, frivolous and exaggerated amounts under several heads such as increase in basic sale price of unit from Rs.19,52,195/- to Rs.21,60,431/-, increase in EDC, IDC charges from Rs.2,45,832/- to Rs.4,28,036.80 and increase in IFMS charges from Rs.36,152/- to Rs.44,193.39. As alleged by complainant allottee, apart from the above enumerated illegal charges, letter dated 15.09.2017 also contains certain other unreasonable and illegal demands qua heads such as 'cooking gas connection charges', 'interest accumulated as on dated', 'EEC and FFC' etc. Allegedly respondent had also arbitrarily increased the area/size of the unit from 1446.070 sq.ft. to 1576 sq.ft.
28. Complainant has further alleged that though the offer of possession was made on 15.09.2017, same was made without completing the construction work of the unit in question and even till date, the unit is not complete and lacks on several counts, which may be verified by a local site inspection. Since on the date of offer of possession, the unit in question was incomplete and the offer was accompanied by illegal demands, complainant did not come forward to accept the offer of possession. As alleged, subsequently respondent issued a statement of



account dated 02.02.2018 demanding balance due amount of Rs.7,92,576.51, however, this time the complainant paid the said amount on 07.02.2018 on assurance that grievances would be settled and the unit, complete in all aspects would be handed over immediately after rectification of deficiencies. Complainant aggrieved by the fact that not only the said promise has not been honoured by respondent, instead, respondent vide the statement of accounts dated 15.11.2019, at annexure-C-6 colly, raised additional demands under the heads 'interest accumulated as on date' and 'holding charges with taxes'. Thus, complainant allottee is before the Authority praying that the illegal charges as demanded by the respondent be set aside and respondent be directed to hand over fresh possession of the unit to complainant after rectifying all deficiencies along with interest at prescribed rate for delay in handing over of possession.

29. Per contra, respondent in its reply has contended that it is the complainant who has defaulted in making payment of balance amount including principal amount, holding charges, maintenance charges, interest component and other expenses.
30. Respondent, in its reply has stated that the complainant had never approached respondent to get the registry done in his favour and it is



due to fault of complainant, the respondent has been burdened with the responsibility and expenses of holding the unit for complainant. Respondent promoter has further stated that it has no objection or hesitation in getting the registry of the said unit done in favour of complainant if complainant agrees to pay the balance amount including holding charges upto 2021 along with interest and maintenance charges upto 2018, apart from other charges due upon the complainant.

31. In view of the above circumstances, now there are three main issues for adjudication before this Authority (i) Whether there has been any delay in handing over of possession of unit to complainant? (ii) Whether the offer of possession made vide letter dated 15.09.2017 was a valid offer of possession or not? (iii) Whether any illegal demands have been made by respondent promoter from the complainant or not?

32. **Issue no. (i) : Whether there has been any delay in handing over of possession of unit to complainant.**

On perusal of the buyer's agreement, annexed at C-3, it is observed that as per clause-27(a), the respondent promoter undertook to complete the development/construction of the flat within 36 months



from the date of signing of agreement or within an extended period of six months, subject to force majeure conditions. As per complainant's version, the buyer's agreement was signed inter-se the party on 23.04.2008, same has not been denied or disputed by the respondent. However, on perusal of the buyer's agreement placed at Annexure-C-3, page-42 of the complaint, it is observed that the agreement was entered into between the complainant and the respondent on 02.06.2008. Meaning thereby, respondent was obligated to complete the unit/flat and hand over possession of the same by 02.06.2011 or in case of any force majeure situation by 02.12.2011. It is observed that respondent has not placed on any document to show or prove existence of any force majeure condition during the intervening period, i.e., between 02.06.2008 to 02.12.2011. Thus, respondent is not entitled to the benefit of grace period of six months.

33. It is a matter of fact that the offer of possession was made vide letter dated 15.09.2017 i.e. after lapse of more than six years from the stipulated time for handing over of possession. Hence, there is no ambiguity with regard to the fact that there has been a delay on part of respondent to complete the unit and hand over the possession of the same as per the time period stipulated in the buyer's agreement and by



virtue of Section-18(i) of The Real Estate (Regulation & Development) Act, 2016, complainant is entitled to the relief of interest as per prescribed rate for the delayed period.

34. Issue no. (ii): Whether the offer of possession made vide letter dated 15.09.2017 was a valid offer of possession or not.

It is the case of the complainant that it did not accept the offer of possession vide letter dated 15.09.2017 as the same was without completion of construction work in the flat and accompanied by certain illegal and arbitrary demands. In order to ascertain whether the offer of possession made vide letter dated 15.09.2017 was a valid offer of possession or not, Authority has referred to said letter, as relied upon by the complainant. On perusal of the same, Authority observes that vide the said letter, respondent had informed the complainant that it had received an occupation certificate bearing no. ZP-261-Vol.II/SD(DK)/2017/20147, dated 17.08.2017 for Tower nos. A, C, I & L and are offering possession of the said flat by virtue of building buyer agreement executed by the complainant. It is pertinent to mention that no photographs or independent expert's report taken/obtained at the time when offer of possession was made, i.e., on 15.09.2017 has been placed on record by complainant which can help



the Authority to ascertain that unit/flat of the complainant was not complete at the time of offer of possession on 15.09.2017. Further, complainant neither has mentioned in its pleadings nor placed on record any document whereby showing/proving that he has at any appropriate forum challenged the grant of above occupation certificate dated 17.08.2017. In absence of any such document, proving the occupation certificate regarding the tower in which flat of the complainant is situated as illegal, it cannot be doubted that the flat/unit in question was incomplete in any respect or increased area was in violation of the building plans when the offer of possession was made on 15.09.2017. It is a matter of general knowledge that occupation certificate is granted by competent authority by following the due procedure as provided in the Haryana Development and Regulation of Urban Areas Act, 1975 and the rules made thereunder.

35. Issue no. (iii): Whether any illegal demands have been made by respondent promoter from the complainant or not?

Now, the question arises whether any illegal demands were raised along with the offer of possession and does the offer of possession dated 15.09.2017 became illegal/invalid just by virtue of these demands being made at the time of offer of possession. In this regard,



Authority observes that as per complainant's version, the basic sale price of the unit was increased from Rs.19,52,195/- to Rs.21,60,431/- However, it is also admitted by complainant that the area of the unit has also illegally been increased from 1446.070 sq.ft. to 1576 sq.ft. Statement of account annexed with letter dated 15.09.2017 at page no.64 of complaint also shows that flat size as 1576 sq.ft. and the basic sale price as Rs.21,60,431/-, meaning thereby that the size of the flat was increased by 129.93 sq.ft. It is pertinent to mention here that as per clause-7 of the pre-RERA buyer's agreement, the area of the flat allotted was tentative and subject to the changes as per directions of sanctioning authority. The said clause further provides that in case increase of allotted area of said flat, the buyer shall pay for initial 10% of increase in area at the rate of booking of the flat. The rate of booking of flat as per the buyer's agreement was Rs.1350/- per sq.ft. Therefore, for an additional area of 129.93 sq.ft. Rs.1350/- per sq.ft. respondent was well within his rights to charge additional amount of Rs.1,75,405/-. On perusal of statement of account annexed with letter dated 15.09.2017, it is apparent the respondent has charged the same plus Rs.32,831.60 as service tax. Hence, increase in size of the flat from 1446.070 sq.ft. to 1576 sq.ft. is within 10% limit and,



corresponding increase in the price from Rs.19,52,195/- to Rs.21,60,431/- cannot be termed illegal.

36. Further, complainant has alleged that respondent has illegally increased EDC & IDC from Rs.2,45,832/- to Rs.4,28,036.80. In this regard, Authority observes that statement of account dated 24.05.2012, communicated to complainant by respondent mentions EDC+IDC as Rs.2,45,832/-. In addition to this, at the fourth column of description, there are charges of Rs.2,02,449.80 for other dues (enhancement of EDC). Further, clause-5 of the buyers agreement provides that "both the parties have agreed that the cost of development and construction of the said flat is escalation free, save and except increases, which the buyer hereby agrees to pay due to increase in flat area, external development charges, infrastructural development charges, govt. rates, taxes, cesses etc. and/or any other charges which may be levied or imposed by the Government/statutory authorities from time to time." Meaning thereby that complainant had agreed to pay the increased amount, if such increase is resultant to increase in such charges by the Government subsequent to signing of buyer's agreement. However, Authority observes that this particular clause, i.e., clause-5 of the buyer's agreement cannot be read in



isolation. It has to be conjointly read with the possession clause in the buyer's agreement whereby respondent undertook to deliver the possession of the flat within 36 months from the date of agreement, i.e., by 02.06.2011. Conjoint reading of clause-5 and 27(a) of the buyer's agreement makes it amply clear that complainant had agreed to pay any increased amounts/charges as levied by Govt./statutory authorities till the deemed date of handing over of possession, i.e., till 02.06.2011. Authority observes that complainant is liable to pay any such increase in govt. charges/taxes from the date of buyer's agreement and till the deemed date of handing over possession, as agreed in the buyer's agreement. However, in case of any hike or increase in any statutory charges or taxes post the deemed date of possession, the burden of the same cannot be transferred or shifted to the complainant. As per agreement for sale/buyer's agreement, it is the obligation of respondent to complete the construction and hand over possession of the same to the complainant within the stipulated time, in case there is any delay in completing the construction or handing over of possession and during that time any new tax is levied by the govt. or there is any enhancement in any other statutory charges, burden of such taxes had to be borne by the builder and



allottee cannot be made to suffer due to default or delay on part of the builder.

Nevertheless, there is nothing on record placed by complainant to prove that there was no such enhancement of EDC, IDC charges by the Govt. till the deemed date of possession as stipulated in the buyer's agreement and respondent is illegally charging the same.

37. Furthermore, with respect to the allegation of illegal demands of interest free maintenance security to the tune of Rs.44,193.39 instead of Rs.36,152/-, it is observed that as per "details of the residential flats" at page-59 of the complaint, interest free maintenance security was agreed @ Rs.25/- per sq.ft. Since area of flat was increased within the permissible limit of 10%, i.e., to 1576 sq.ft., the IFMS for the same @ Rs.25/- per sq.ft. increased to Rs.39,400/-. The respondent in its offer letter dated 15.09.2017 has charged the same plus Rs.4,793/- as service tax on the said amount. Therefore, this component of the demand cannot be termed illegal and arbitrary.

38. Last but not the least, complainant has also claimed that certain other illegal amounts were also charged from him under the heading of cooking gas connection charges, interest as on date and EEC & FFC charges. With respect to these, Authority observes that for providing



the cooking gas connection, payments are required to be made to the gas service provider for laying down adequate infrastructure for supply of cooking gas. There is nothing on record to show that the total sale price of the flat as mentioned in the buyer's agreement, was inclusive of cooking gas connection charges. If any additional service has been provided, then it is a reasonable expectation that complainant shall pay for the same. It is not the case of the complainant that the amount was charged whereas there was no such facility being provided in the flat.

39. With regard to "interest accumulated as on date" component, Authority observes that after The Real Estate (Regulation & Development) Act, 2016 coming into force, interest, either from the allottee or from the promoter, can only be charged as per prescribed rate. However, it is not clear from the offer of possession letter dated 15.09.2017 that whether the interest imposed upon the complainant allottee was calculated at the prescribed rate or as per rate provided in the buyer's agreement. Also, the complainant in his complaint has simply stated that unreasonable and illegal demand was made qua "interest accumulated as on date". However, complainant has not clarified as to how this demand qua the interest accumulated as on



date was illegal and unreasonable. It is not clear whether the same was illegal because complainant has paid all installments in time as and when demanded or whether the same was illegal as the rate at which it was charged was contrary to the prescribed rate of interest as provided under The Real Estate (Regulation & Development) Act, 2016 and Rules of 2017 made thereunder. It is pertinent to mention here that as per the 'note' at the bottom of the letter dated 15.09.2017, "content of the statement shall be deemed correct unless informed about any discrepancies within ten days from the date of the letter". Again, there is nothing on record to show that the complainant ever communicated to respondent about these discrepancies in the offer letter. However, admittedly complainant made the payment of Rs.7,92,576/- as per the statement of account dated 02.02.2018 and as per the statement, no amount against interest accumulated has been charged from the complainant.

40. Authority observes that complainant alleges that he did not accept the offer of possession as the same was without completion of the construction work and accompanied by illegal demand, ironically, complainant made no communication to respondent protesting/contesting the illegal demands accompanying the offer of possession



dated 15.09.2017 and factum of completion of construction work. There is no document on record to show that complainant ever sent any communication to respondent promoter stating that he is not accepting the offer of possession made on 15.09.2017 as the same is accompanied by illegal demands. It is pertinent to mention that undoubtedly it is the duty of respondent promoter to hand over possession within the stipulated time, however, it is also the obligation upon the complainant to make timely payment as and when demanded. Since, offer of possession dated 15.09.2017 was issued after issuance of occupation certificate, which is not disputed by any of the parties, complainant was liable to pay instalment raised along with the offer of possession or to contest the same before an appropriate forum. It is a matter of fact that complainant neither accepted the possession nor contested the same before any forum, instead after issuance of another statement of account dated 02.02.2018 by respondent, complainant admittedly made the payment of Rs.7,92,580/- on 07.02.2018. Complainant had not placed on record any document to show that such payment of Rs.7,92,580/- was made under protest or subsequent to such payment, he communicated his discontentment regarding such payment to respondent.



41. Thus, on the basis of record on file placed by the parties, Authority is not hesitant to state that the offer of possession dated 15.09.2017 which was made after obtaining occupation certificate from the competent authority apparently did not contain any demand contrary to the terms of buyer's agreement and was, therefore, a valid offer of possession. At that time, as per clause-27(d) of the buyer's agreement, upon receiving the written intimation from the company, it was obligated upon the buyer to take over the possession of the said flat from the company within the time period as mentioned in the notice offering possession after executing necessary documents and payment of all dues. Vide letter dated 15.09.2017, complainant was requested by respondent company to take necessary steps and complete the formalities as mentioned in the letter within a period of 30 days. Nonetheless, the complainant neither came forward to accept the possession nor made any communication protesting against the illegal demands. In fact, on 07.02.2018, the complainant made all payments as raised by respondent vide statement of accounts dated 02.02.2018, thereby showing its intention to accept the offer of possession. It is further observed that if upon the valid offer of possession on 15.09.2017, complainant had come forward and taken the physical



possession of the flat after completing all necessary formalities admittedly, when the directors of the company were not behind bars, there would not have been any impediment in handing over physical possession. Since, it is the complainant who did not fulfil his part of obligation on time, he cannot be allowed to claim a fresh offer of possession after rectification of deficiencies which would have occurred during the period respondent had been holding it.

42. Authority observes that the complainant in its complaint has stated that even after making the entire payment on 07.02.2018, respondent never handed over the physical possession of the flat to him. Complainant has further stated that the directors of the respondent company were behind the bars since 2018 due to which physical possession of the unit remained with respondent. Therefore, the respondent be directed to make a fresh offer of possession to complainant and that too after rectifying the deficiencies in the flat. Here, it is pertinent to mention that the respondent in its reply has admitted holding the unit/flat for the complainant and therefore, claiming holding charges from the complainant. There is no denying the fact after the valid offer of possession on 15.09.2017, the complainant made complete payment on 07.02.2018. It is also an



admitted fact that the directors of the company were behind bars since 2018, However, company was a going concern and physical possession could have been offered to complainant. The complainant has also not placed on record any document of communication to respondent seeking handing over physical possession of the unit/flat to him. Thus, it cannot be ascertained that the complainant approached the respondent to take physical possession of the flat and the same was denied to him.

43. As far as the physical condition of the unit/flat is concerned, in order to ascertain the same, Authority vide its order dated 27.04.2023 appointed Mr. Arvind Mehtani, CTP of the Authority as the local commissioner to verify the deficiencies of the flat of the complainant. Mr. Mehtani visited the flat and submitted his report along with photographs on 19.06.2023 wherein it is stated that the unit/flat of the complainant is not in habitable condition. In view of such circumstances, Authority observes that undoubtedly the respondent was holding the unit for the complainant and should have maintained the same. Only in a situation if the unit/flat was in a habitable condition, respondent could have asked for maintenance or holding charges. Since, respondent failed to maintain and upkeep the flat, he is



not entitled to charge any holding or maintenance charges from the complainant.

H. DIRECTIONS OF THE AUTHORITY

44. Hence, the Authority hereby passes this order and issues following directions 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. The respondent no.1 is directed to pay an amount of **Rs.15,91,560/-** as interest accrued at the prescribed rate of 10.75% for every month of delay on the amount paid by the complainant from the due date of possession i.e. 02.06.2011 till 15.9.2017 i.e. upto the date of valid date of offer of possession after receipt of occupation certificate.
- ii. The arrears of delay possession interest accrued so far shall be paid to the complainant within 60 days from the date of this order.
- iii. Respondent shall hand over the possession of the unit on as and where basis within 30 days of uploading of this order. Deficiency, if any, shall be rectified by complainant at his own cost. However, it is without prejudice to the right of the



complainant to claim compensation for deficiencies in the unit/flat under the provisions of The Real Estate (Regulation & Development) Act, 2016.

45. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]