



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	78 of 2021
Date of filing:	09.02.2021
Date of first hearing:	06.04.2021
Date of decision:	22.08.2023

1. Sh. Mathura Prasad S/o Late Naga Mahto and
2. Smt. Poonam Prasad w/o Mathura Prasad
R/o Laxmi Niwas, Jyoti Puram Colony, Ambedkar Path, Patna-14
....COMPLAINANT(S)

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** **Member**
 Nadim Akhtar **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 complainants on 09.02.2021 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 complainants, 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-116, 1 st floor, Tower C



4.	Unit area	1446.070 sq. ft.
5.	Revised unit area	1576 sq. ft.
6.	Date of builder buyer agreement	13.08.2010
7.	Due date of offer of possession	As per clause 27(a) of BBA- 36 months from date of execution of BBA i.e., 13.08.2013. <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.	Basic sale price	Rs.27,07,043/-
9.	Amount paid by complainant	Rs. 29,97,042/-
10.	Offer of possession	14.09.2017
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 COMPLAINANTS

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 the complainants/allottees were approached by the respondent in relation of booking of the flat and in pursuance of the same, the booking was entered into in the year 2010 qua flat no. C-116, Tower – C, on 1st Floor, in project "Piyush Heights" of M/s Piyush Buildwell India Ltd at Faridabad, Haryana.
5. That the unit was offered for a basic sale price of Rs. 27,07,043/-and in accordance with the payment plan, the following payments were duly made in favour of the respondents which are annexed as Annexure C-1–Colly with complaint file: -

- Payment for amount of Rs. 3,98,445/- dated 14.07.2010
- Payment for amount of Rs. 12,00,000/- dated 08.09.2010.
- Payment for amount of Rs. 2,50,000/- dated 21.09.2010
- Payment for amount of Rs. 7,20,000/- dated 07.10.2010



- Payment for amount of Rs. 15,000/- dated 12.10.2010
- Payment for amount of Rs. 1,10,000/- dated 12.10.2010
- Payment for amount of Rs. 3,03,597/- dated 30.10.2010

That in this way, a total payment of Rs. 29,97,042/- has been duly and admittedly made, as and when called for by the respondents.

6. That the builder buyer's agreement inter-se the parties qua flat bearing No. C-116, Tower – C, on 1st Floor in project “Piyush Heights” was duly executed on 06.07.2010. A copy of agreement is annexed as Annexure C-2. As per clause 27(a) of the agreement, possession of complete unit in question was to be handed over to the complainants/allottees within a period of 36 months from the date of execution of the agreement, i.e., upto 06.07.2013.
7. That respondent promoter issued a letter dated 14.09.2017 with the subject “offer of possession for flat no. C-116, 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. The copy of the letter dated 14.09.2017 is annexed as Annexure C-3.



8. That further, the letter dated 14.09.2017 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. 27,07,043/- to Rs. 30,61,922.76/-, 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. 43,821.03/-
9. That apart from the above enumerated illegal charges put forth in the letter dated 14.09.2017, the same also contained unreasonable and illegal demands qua heads such as 'interest accumulated as on date', 'cooking gas connection charges', 'podium charges', 'EEC and FFC' etc. The said increases/enhancements so effected by the respondent companies are apparent from the perusal of the letter dated 14.09.2017, as against the letter dated 27.10.2010, copy of which has been appended as Annexure C-4.
10. 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 complainants/allottees. The said increase is not just unilateral and without the consent of the complainant-allottees, but also against the approved building plans.

11. That the complainant-allottees expressed discontent and objected to the said letter dated 14.09.2017 and asked the respondent to complete the unit in question before any such offer. However, to the utter shock and displeasure of the complainant-allottees, within a very short time of the said letter dated 14.09.2017, it was informed that the directors of the respondent company are behind bars due to the frauds committed. Thereafter, the complainant-allottees have been trying from pillar to post to get their grievances redressed and 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 complainants.
12. That the possession of the ready unit was to be handed over by the respondents to the complainants within a period of 36 months from the date of the agreement. The said period of 36 months for handing over the possession already expired on 06.07.2013, nevertheless the

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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.

13. The respondents have failed to deliver possession of the unit in question even after more than 10 and a half years of the payment of booking amount towards the same, more than 10 and a half years of execution of the agreement qua the same, and more than 7 years of the due date of possession, not to forget that the delay is continuing.
14. That the complainants who have 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.
15. That complainant-allottees had applied for loan from M/s LIC Housing Finance Ltd. by placing trust upon the respondent company regarding timely and uncompromised delivery of possession of the unit in question, and is thus burdened by the instalments thereof.

had

16. That the respondent company is further illegally charging amounts qua 'interest accumulated as on date' and 'holding charges with taxes'. The amounts under such vexatious heads are completely unreasonable as are liable to be quashed out-rightly by the Authority.
17. That this attitude on the part of the respondents has rendered the complainant-allottees completely shattered, heartbroken; and being highly aggrieved and frustrated by the entire circumstances, the complainants are 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.
18. That the 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 complainant therein.
19. That complainant-allottees are, 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 complainants 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

20. In view of the facts mentioned above, the complainant prays 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-allottees.
- (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 14.09.2017 and to hand over the 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.



29,97,042/- 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', 'podium 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-allottees.
- (viii) To direct the respondents to pay a sum of Rs. 5,00,000/- on account of grievance and frustration caused to the complainants by the miserable attitude of the respondents and deficiency in service and for causing mental agony caused to the complainants, along with interest from the date of filing the present complaints till its realization.



- (ix) The registration, if any, granted to the respondent 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 complainants 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:

21. 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 01.11.2021 pleading therein:-

- 1) That a flat no. C-116, 1st floor, Sector-89, Piyush Heights, Faridabad was allotted to the complainants and the builder buyer agreement was signed on 13.08.2010.
- 2) That the complainants have alleged to have paid the entire amount but they never paid the entire amount of the flat. That it is highly unbelievable that the persons who had paid the entire amount in the year 2010 remained mum for 11 years and not taken any action.



- 3) That the complainants had not paid the balance amount i.e., principal amount, holding charges, maintenance charges, interest and other expenses. Payment of Rs.12,54,852/- against principal amount and Rs. 15,02,837/- as interest and other charges are due against the complainants.
- 4) That respondent-builder has no objection or hesitation to get registry of the said flat done if the complainants 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 buyers/complainants.
- 5) That the complainants without paying the entire amount of the flat is claiming the possession, this shows the mal practice on part of the complainants and therefore complaint should be dismissed on this ground. Further, respondent had requested the complainants 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 complainants who did not come forward to take possession.



- 6) Due to default on part of the complainants, 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 RWA to stop all illegal practice failing which legal action will be taken against RWA. However, RWA ignored the request of 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



already sealed by the other government authorities and whole record is with the government authorities. Regarding this allegations another complaint dated 16.08.2021 was filed by the director, Amit Goyal to the Commissioner of Police Faridabad. The 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 COMPLAINANTS AND RESPONDENT

22. During oral arguments ld. counsel for complainants and respondent no. 1 reiterated their respective arguments as stated in their written submissions. In addition, Ld. Counsel for the complainants stated that offer of possession letter dated 14.09.2017 accompanied with certain demands due to increase in area of the flat are excessive and unjustified.



Learned counsel for complainants further stated that complainants wants to take possession of their flat. However, due to some deficiencies and unjustified demands raised by the respondent, they 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, they prayed for delivery of possession after rectifying deficiencies and for withdrawing the impugned demands.

23. 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 14.09.2017. 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, the complainants 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 complainants can also be attributed from the very fact that complainants never communicated any deficiency in flat since 2017, nor objected the demands made in offer letter through any mode; rather complainants 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 complainants 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

24. 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 complainants booked a flat in the year 2010 and were allotted flat bearing no. C-116, Tower-C on 1st 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.27,07,043/- and the builder buyer agreement was executed inter-se the complainant and the respondent on



06.07.2010; 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 14.09.2017, annexed at C-3.

25. The grouse of the complainants are that the offer of possession vide letter dated 14.09.2017 contained illegal, frivolous and exaggerated amounts under several heads such as increase in basic sale price of unit from Rs.27,07,043/- to Rs.30,61,922.76/-, 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.43,821.03. As alleged by complainant allottees, apart from the above enumerated illegal charges, letter dated 14.09.2017 also contains certain other unreasonable and illegal demands qua heads such as 'cooking gas connection charges', podium 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.
26. Complainants have further alleged that though the offer of possession was made on 14.09.2017, 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, complainants did not come forward to accept the offer of possession. Respondent issued a statement of account dated 14.09.2017 along with offer of possession demanding balance due amount of Rs.16,93,832.09 annexed at annexure-C-3, raised additional demands under the heads 'interest accumulated as on date', EEC & EFC' and other charges. Thus, complainant allottees are before the Authority praying that the illegal charges as demanded by the respondent in letter dated 14.09.2017 be set aside and respondent be directed to hand over fresh possession of the unit to complainants after rectifying all deficiencies along with interest at prescribed rate for delay in handing over of possession.

27. Per contra, respondent in its reply has contended that it is the complainants who have defaulted in making payment of balance amount including principal amount, holding charges, maintenance charges, interest component and other expenses.



28. Respondent, in its reply has stated that the complainants had never approached respondent to get the registry done in their favour and it is due to fault of complainants, the respondent has been burdened with the responsibility and expenses of holding the unit for complainants. Respondent promoter has further stated that it has no objection or hesitation in getting the registry of the said unit done in favour of complainants if complainants 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 complainants.
29. 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 complainants? (ii) Whether the offer of possession made vide letter dated 14.09.2017 was a valid offer of possession or not? (iii) Whether any illegal demands have been made by respondent promoter from the complainants or not?
30. **Issue no. (i) : Whether there has been any delay in handing over of possession of unit to complainants.**



On perusal of the buyer's agreement, annexed at C-2, 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 06.07.2010, same has not been denied or disputed by the respondent. However, on perusal of the buyer's agreement placed at Annexure-C-2, page-34 of the complaint, it is observed that the agreement was entered into between the complainant and the respondent on 13.08.2010. Meaning thereby, respondent was obligated to complete the unit/flat and hand over possession of the same by 13.08.2013 or in case of any force majeure situation by 13.02.2014. 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 13.08.2010 to 13.02.2014. Thus, respondent is not entitled to the benefit of grace period of six months.

31. It is a matter of fact that the offer of possession was made vide letter dated 14.09.2017 i.e. after lapse of more than four 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, complainants are entitled to the relief of interest as per prescribed rate for the delayed period.

32. **Issue no. (ii): Whether the offer of possession made vide letter dated 14.09.2017 was a valid offer of possession or not.**

It is the case of the complainants that they did not accept the offer of possession vide letter dated 14.09.2017 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 14.09.2017 was a valid offer of possession or not, Authority has referred to said letter, as relied upon by the complainants. On perusal of the same, Authority observes that vide the said letter, respondent had informed the complainants 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 complainants. 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 14.09.2017 has been placed on record by complainants which can help the Authority to ascertain that unit/flat of the complainants was not complete at the time of offer of possession on 14.09.2017. Further, complainants 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 complainants 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 14.09.2017. 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.

33. **Issue no. (iii): Whether any illegal demands have been made by respondent promoter from the complainants 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 14.09.2017 became illegal/invalid just by virtue of these demands being made at the time of offer of possession. In this regard, Authority observes that since it is the complainants who did not accept the offer of possession made vide letter dated 14.09.2017 due to alleged illegal demands accompany the letter of possession, thus, initial onus to prove that such demands were illegal is upon them. As per complainants version, the basic sale price of the unit was increased from Rs. 27,07,043/- to Rs. 30,61,922.76/-. However, it is also admitted by complainants 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 14.09.2017 at page no.53 of complaint also shows that flat size as 1576 sq.ft. and the basic sale price as Rs.30,61,922.76/-, 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 and receipts issued by respondent was Rs.1872/- per sq.ft. For an original area of 1446.070 sq. ft, respondent can charge Rs. 27,07,043.04 (1446.070 sq. ft @ Rs. 1872 per sq.ft.). Further, for an additional area of 129.93 sq.ft. @ Rs.1872/- per sq.ft., respondent was well within his rights to charge additional amount of Rs. 2,43,228.96 /-. Therefore, for total area of 1576 sq. ft, respondent can charge Rs.29,50,272/-. On perusal of statement of account annexed with letter dated 14.09.2017, it is apparent the respondent has charged the same plus Rs. 1,11,650.76/- 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. 27,07,043/- to Rs. 30,61,922.76/- cannot be termed illegal.

34. Further, complainants have 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 27.10.2010, communicated to complainants by respondent mentions EDC+IDC as Rs.2,45,832/-. 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 complainants 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 13.08.2013. Conjoint reading of clause-5 and 27(a) of the buyer's agreement makes it amply clear that complainants 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 13.08.2013. Authority observes that complainants are 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 complainants. 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 complainants 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 allottees cannot be made to suffer due to default or delay on part of the builder.

Nevertheless, there is nothing on record placed by complainants 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.

35. Furthermore, with respect to the allegation of illegal demands of interest free maintenance security to the tune of Rs.43,821.03/- instead of Rs.36,152/-, it is observed that as per "details of the residential flats" at page-47 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 14.09.2017 has charged the same plus Rs.4,420.75 /- as service tax on the said amount. Therefore, this component of the demand cannot be termed illegal and arbitrary.

36. Last but not the least, complainants have also claimed that certain other illegal amounts were also charged from him under the heading of cooking gas connection charges, interest as on date, podium charges 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 other additional service has been provided then it is a reasonable expectation that complainants shall pay for the same. It is not the case of the complainants that the amount was charged whereas there was no such facility being provided in the flat. Therefore, such component of the demands cannot be termed illegal and arbitrary.

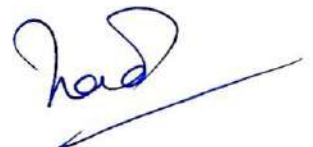


37. With regard to an amount of Rs. 4,41,210/- mentioned as "interest accumulated as on date" component in statement of account dated 14.09.201, Authority observes that after The Real Estate (Regulation & Development) Act, 2016 coming into force, interest, either from the allottee or from the promoter, can only be charged as per prescribed rate. However, it is not clear from the offer of possession letter dated 14.09.2017 that whether the interest imposed upon the complainants allottees was calculated at the prescribed rate or as per rate provided in the buyer's agreement. Also, the complainants in their complaint have simply stated that unreasonable and illegal demand was made qua "interest accumulated as on date". However, complainants have 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 complainants have paid the 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 letter dated 14.09.2017,"content of the statement shall be deemed correct unless informed about any



discrepancies within ten days from the date of the letter”, however, complainants neither communicated to respondent about these discrepancies in the offer letter within said period nor contested these before any forum. Therefore, such component of the demand per se cannot be termed illegal and arbitrary. Nevertheless, Authority observes that if any interest accrued against the allottees for any default on their part, i.e., non-payment of installments on time vide letter dated 14.09.2017, the same could have been charged only at the rate prescribed under Real Estate (Regulation & Development) Rules, 2017.

38. Authority observes that complainants alleges that they did not accept the offer of possession as the same was without completion of the construction work and was accompanied with deficiencies, ironically, complainants made no communication to respondent protesting/contesting factum of deficiencies in the unit. There is no document on record to show that complainants ever sent any communication to respondent promoter stating that he is not accepting the offer of possession made on 14.09.2017 as the construction is not complete and unit allotted has deficiencies. It is pertinent to mention that undoubtedly it is the duty of respondent promoter to hand over



possession complete in all respects, however, it is also the obligation upon the complainants to communicate deficiency in the unit as and when offer of possession was made. Since, offer of possession dated 14.09.2017 was issued after issuance of occupation certificate, which is not disputed by any of the parties, which in itself shows that unit was complete and ready for usage in all respects at the time of offer of possession. It is a matter of fact that complainants neither accepted the possession nor contested the same before any forum.

39. Thus, on the basis of record on file placed by the parties, Authority is not hesitant to state that the offer of possession dated 14.09.2017 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 14.09.2017, complainants were 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 complainants neither came forward to accept the possession nor protested against the illegal demands before any forum. It is further observed that if upon the valid offer of possession on 14.09.2017, complainants had come forward and taken the physical possession of the flat 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 complainants who neither communicated deficiencies in flat to respondent after offer of possession nor contested offer letter before any forum, now they 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.

40. Authority observes that the complainants in their complaint have stated that respondent never handed over the physical possession of the flat to them. Complainants have further stated that the directors of the respondent company were behind the bars since the year 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 complainants 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 complainants and therefore, claiming holding charges from the complainants. There is no denying the fact after the valid offer of possession on 14.09.2017, the complainant has not made complete payment yet. 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 given to complainants. The complainants have also not placed on record any document of communication to respondent seeking handing over physical possession of the unit/flat to them after payment of outstanding dues. Thus, it cannot be ascertained that the complainants approached the respondent to take physical possession of the flat and the same was denied to them.

41. 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 complainants. 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 complainants 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.

G. DIRECTIONS OF THE AUTHORITY

42. 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 Real Estate (Regulation & Development) Act, 2016.

- i. The respondent no.1 is liable to pay an amount of **Rs.13,18,740/-** as interest accrued at the prescribed rate of 10.75% for every month of delay on the amount paid by the complainants from the due date of possession i.e. 13.08.2013 till 14.09.2017, i.e., upto the date of valid date of offer of possession after receipt of occupation certificate within 90 days from the date of uploading of this order.



- ii. With regard to the 'interest accumulated as on date' component, respondent shall re-calculate the interest accrued towards complainant till 14.09.2017 as per the prescribed rate of interest provided under RERA Act and Rules made thereunder. Respondent no. 1 shall also convey the complainants the reasons/details of default on part of complainants for charging the same. Thereafter, the complainants are also liable to pay the outstanding dues communicated to them by respondent no. 1, if any.
- iii. Respondent no. 1 shall hand over the possession of the unit on as and where basis within 30 days of uploading of this order.

These directions are without prejudice to the right of the complainants to claim compensation for deficiencies in the unit/flat under the provisions of the Real Estate (Regulation & Development) Act, 2016.

43. **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]