



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1326 of 2020
Date of filing:	19.11.2020
Date of first hearing:	28.01.2021
Date of decision:	22.08.2023

Mrs. Suman Devi
R/o C-49, Sector-23,
Noida, Uttar Pradesh

...COMPLAINANT

VERSUS

M/s Piyush Buildwell India Ltd.
Address: R/o Piyush Global-I (First Floor), Plot No. 5,
YMCA Chowk, NH-2, Near Escorts Mujesar Metro Station,
Main Mathura Road, Faridabad, Haryana-121006

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: Ms. Aishwarya Dobhal, Id. counsel for the complainant.
Mr. Gaurav Singla, counsel for the respondent.

ORDER(NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 19.11.2020 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 :

Sr. No	Particulars	Details
1.	Name of the Project	Piyush Heights, Sector 89, Faridabad, Haryana
2.	RERA registered/ not registered	Unregistered
3.	Unit No.	L-1115, 11 th floor, Tower L
4.	Unit area	1268 sq.ft. (original area-1164 sq. ft.)



5.	Date of allotment	03.04.2008
6.	Date of builder buyer agreement	09.01.2009
7.	Due date of offer of possession	As per clause 27(a) of BBA- 36 months from date of execution of BBA i.e., 09.01.2012. <i>"27(a) That the Company shall complete 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.	Original Basic sale price	Rs.15,71,400/-
9.	Amount paid by complainant	Rs.20,83,996.62/-
10.	Offer of possession	16.09.2017
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 "Piyush Buildwell India Ltd.
4. That a flat bearing no. L-1115, Tower -L was booked by complainant in the year 2008 in project namely "Piyush Heights" of 'M/s Piyush Buildwell India Ltd' at Faridabad, Haryana which was allotted to the complainant vide allotment letter dated 03.04.2008. A copy of the said allotment letter is annexed as Annexure-A.
5. That the basic sale price of the unit was Rs.15,71,400/- as per statement of account dated 22.04.2013 and in accordance with the payment plan, total payment of Rs.20,83,996.62/- has already been made by complainant as and when called for by the respondent. Copy of receipts showing that payments were duly made in favour of the respondent is annexed as Annexure C.



6. That builder buyer's agreement was also signed between the respondent builder and the complainant on 09.01.2009, a copy of which is annexed as Annexure-B. As per the clause 27(a) of the agreement, possession of complete unit in question was to be handed over to the allottee within a period of 36 months from the date of execution of the agreement, i.e., upto 09.01.2012.
7. That a letter for offer of possession dated 16.09.2017 was received from the respondent stating that the respondent company was ready to offer possession of the flat subject to fulfillment of certain conditions and payment of remaining dues. A copy of the said offer of possession is annexed as Annexure-D. However, in such offer letter, respondent company had raised several unreasonable payment demands.
8. That the complainant have already deposited an amount of Rs. 20,83,996.62/-, which is demonstrated from the statement of account dated 16.09.2017 issued by respondent, annexed as Annexure-F. However, in the said statement of account which was issued along with the offer of possession letter dated 16.09.2017, the respondent asked for an additional amount of Rs. 7,04,203.97/- on account of additional facilities that were never provided.



9. That the flat was not completed even after a long gap of 11 years by respondent and the complainant was forced to take possession of it. Under compelling circumstances, the complainant initially prepared a demand draft dated 23.04.2018 for Rs. 3,50,000/- in favour of the respondent to pay the demands that was unduly raised by the respondent in its statement of account dated 16.09.2017, however, the said demand draft was never encashed by the respondent. A copy of the said demand draft is annexed as Annexure-G.
10. That the complainant again approached the respondent enquiring for possession and registry of her flat and was again asked to deposit the remaining amount of about Rs. 7 Lacs. Consequently, the complainant again prepared two demand drafts for Rs.3,80,000/- and Rs. 3,20,000/- respectively, both dated 21.07.2018 which were never encashed by the respondent. Copies of the said demand drafts are annexed as Annexure-H.
11. The complainant was also asked by the officials of the respondent company to issue a cheque for purchasing of stamp paper in order get the flat of the complainant registered. Thereafter, the complainant issued a cheque of Rs. 68,600/- for purchase of stamp paper and handed it over to the officials of the respondent duly encashed by



respondent. The complainant is left in the lurch by the respondent company with no sight of a completed flat.

12. That the basic work and furnishings had also not been completed and yet the respondent has issued a letter of offer for possession on 16.09.2017. Pictures demonstrating the condition of the flat are annexed herewith as Annexure-K.
13. The respondent builder had to handover the possession in 2011, whereas the respondent failed to do the same. Whenever the complainant approached the office of the respondent for registration of the property in her name, she was either sent away on one pretext or the other or the office was found closed/locked.
14. Neither were the concerns of the complainant regarding payment addressed, nor was her flat even completed. Now, the future of the complainant and her ownership of the property have been clouded due to the carelessness of the respondent company. Hence the present complaint is filed.

C. RELIEF SOUGHT

15. In view of the facts mentioned above, the complainant has prayed for the following relief(s):-



- i. Pass an order directing to the respondent builder to handover possession of the said flat to the complainant herein;
- ii. Pass an order directing the respondents to get the registration of the flat (conveyance deed) done in the name of the complainant;
- iii. Pass an order directing the respondent to withdraw the demand for additional deposit in lieu of maintenance and/or holding charges and the property should be allocated to the complainant at the original cost as agreed upon in the agreement;
- iv. Pass an order as against the respondent to compensate the complainant to the tune of Rs. 15 Lacs for delay in possession, for out of pocket expenses of the complainant spent in getting construction work done and for causing harassment and mental agony to the complainant; and/or
- v. Pass any other/further order or relief which this Hon'ble Court may deem fit and proper in the interest of justice in the light of the abovementioned circumstances.

D. REPLY FILED BY RESPONDENT:

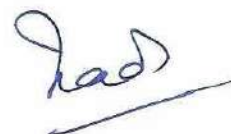
16. In present case, respondent filed its reply on 05.10.2021 pleading therein:-



- 1) That a flat no. L-1115, Sector-89, Piyush Heights, Faridabad was allotted to the complainant vide allotment letter dated 03.04.2008 and the builder buyer agreement was signed on 09.01.2009.
- 2) That the complainant has alleged to have paid the entire amount but she never paid the balance amount, i.e., principal amount, holding charges, maintenance charges, interest and other expenses and filed the present complaint.
- 3) That the complainant is seeking the direction to execute the conveyance deed in her favour but in the entire complaint she nowhere stated that how she is in the possession of the flat when the possession was never handed over by the respondent when the builder was in the Jail.
- 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/complainants.



- 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 her 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 respondent 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 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 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

17. During oral arguments learned counsel for complainant and respondent reiterated their respective arguments as stated in their written submissions. In addition, Ld. Counsel for the complainant stated that offer of possession letter dated 16.09.2017 accompanied with certain demands with respect to basic sale price, EDC/IDC, IFMS and other charges are excessive and unjustified.

Learned counsel for complainant further stated that complainant wants to take possession of her flat. However, due to some deficiencies and unjustified demands raised by the respondent, complainant did not accept the possession in 2017. Thus, she prayed for delivery of possession after withdrawing the impugned demands and for execution of conveyance deed in favour of complainant.

18. In response, learned counsel for respondent, 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 16.09.2017. Offer of possession was made in the year 2017 after receiving the occupation



certificate from DTCP, Haryana on 17.08.2017 wherein size of the unit was increased from 1164sq. ft. to 1268 sq. ft.. 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, complainants in connivance with RWA members, broke the locks of the flat and damaged the floor, glass, etc., and kept the flat open. 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 paid the outstanding dues as stated in the offer letter rather remained mum for so many years and filed the present complaint for execution of conveyance deed without paying the outstanding dues till date. Now at this stage, after expiry of more than three 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 compensate complainant for deficiencies in flat and to handover



possession and execute conveyance deed without receiving the balance dues from complainant including the holding charges.

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

19. 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 complainant booked a flat in the year 2008 and was allotted flat bearing no. L-1115, Tower-L on 11th floor in the real estate project “Piyush Heights” at Faridabad, Haryana, being developed by the respondent promoter namely; M/s Piyush Buildwell India Ltd. The builder buyer agreement was executed inter-se the complainant and the respondent on 09.01.2009; 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 16.09.2017, annexed at Annexure D.
20. The grouse of the complainant is that against the sale price of the unit amounting to Rs. 15,71,400/- as stated in statement of account dated 22.04.2013 the complainant had already paid an amount of



Rs.20,83,996.62/-, as admitted in the statement of account dated 16.09.2017 issued by respondent. However, vide said statement of account issued along with an offer of possession letter, the respondent asked for an additional amount of Rs.7,04,203.97/- which are unreasonable and illegal.

21. Complainant has further alleged that though the offer of possession was made on 16.09.2017, same was made without completing the construction work of the unit in question. 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 accept the offer of possession. Respondent issued a statement of account dated 16.09.2017 along with offer of possession demanding balance due amount of Rs. Rs.7,04,203.97/- annexed at annexure-F, raised additional demands. Thus, complainant allottee is before the Authority praying that the illegal charges as demanded by the respondent in letter dated 16.09.2017 be set aside and respondent be directed to hand over fresh possession of the unit to complainant and execute conveyance deed in favour of complainant.
22. 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.

23. Respondent, in its reply has stated that the complainant had never approached respondent to get the registry done in her 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.
24. 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 16.09.2017 was a valid offer of possession or not? (iii) Whether any illegal demands have been made by respondent promoter from the complainant or not?



25. **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 Annexure-B, 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. On perusal of the buyer's agreement placed at Annexure-B, page-20 of the complaint, it is observed that the agreement was entered into between the complainant and the respondent on 09.01.2009. Meaning thereby, respondent was obligated to complete the unit/flat and hand over possession of the same by 09.01.2012 or in case of any force majeure situation by 09.07.2012. 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 09.01.2009 to 09.07.2012. Thus, respondent is not entitled to the benefit of grace period of six months.

26. It is a matter of fact that the offer of possession was made vide letter dated 16.09.2017 i.e. after lapse of more than five 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(1) of The Real Estate (Regulation & Development) Act, 2016, complainant is entitled to the relief of interest as per prescribed rate for the delayed period.

27. **Issue no. (ii): Whether the offer of possession made vide letter dated 16.09.2017 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 16.09.2017 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 16.09.2017 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 size of the unit is mentioned as 1268 sq. ft. in the offer letter instead of 1164 sq. ft as agreed in the agreement for sale. Though photographs are attached with complaint file as annexure-J alleging deficiencies in flat in question, however such photographs are undated and no other independent expert's report taken/obtained at the time when offer of possession was made, i.e., on 16.09.2017 which can help the Authority to ascertain that unit/flat of the complainant was not complete at the time of offer of possession on 16.09.2017. Further, complainant neither has mentioned in its pleadings nor placed on record any document whereby showing/proving that she 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 16.09.2017. 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.



28. **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 16.09.2017 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 Rs. 15,71,400/-. However, on perusal of allotment letter and agreement, the original size of the unit was 1164 sq. ft and rate of per sq ft. was Rs. 1350/- therefore, original basic sale price comes out to Rs. 15,71,400/-, which is increased from Rs. 15,71,400/-, to Rs. 17,42,988.43/- in statement of account annexed with offer letter dated 16.09.2017. It is pertinent to mention that the area of the unit has been increased from 1164 sq.ft. to 1268 sq.ft. after issuance of occupation certificate as admitted by both the parties. Statement of account annexed with letter dated 16.09.2017 at page no.48 of complaint also shows that flat size as 1268 sq.ft. and the basic sale price as Rs. 17,42,988.43/-, meaning thereby that the size of the flat was increased by 104 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 was Rs.1350/- per sq.ft. Therefore, for an additional area of 104 sq.ft. @ Rs.1350/- per sq.ft., respondent was well within his rights to charge additional amount of Rs.1,40,400/-. On perusal of statement of account annexed with letter dated 16.09.2017, it is apparent the respondent has charged the same plus Rs.31,188.43 as service tax. Hence, increase in size of the flat from 1164 sq.ft. to 1268 sq.ft. is within 10% limit and, corresponding increase in the price from Rs. 15,71,400/-, to Rs. 17,42,988.43/- cannot be termed illegal.

29. Further, complainant has alleged that respondent has illegally increased EDC & IDC at the time of offer of possession. In this regard, Authority observes that 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 09.01.2012. 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 09.01.2012. 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.

30. Furthermore, with respect to the allegation of illegal demands of interest free maintenance security to the tune of Rs.35,556.38/- instead of Rs.29,100/- (i.e., 1164 sq ft. @Rs. 25 per sq. ft.), it is observed that as per "details of the residential flats" at page-22 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 1268 sq.ft., the IFMS for the same @ Rs.25/- per sq.ft.



increased to Rs.31,700/-. The respondent in its offer letter dated 16.09.2017 has charged the same plus Rs.3,856.38/- as service tax on the said amount. Therefore, this component of the demand cannot be termed illegal and arbitrary.

31. Last but not the least, complainant has also claimed that certain other illegal amounts were also charged from her 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.
32. Authority observes that complainant alleges that she did not accept the offer of possession as the same was without completion of the construction work and accompanied by illegal demands. 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 16.09.2017 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. In the present case, complainant has fulfilled her obligation as she initially prepared a demand draft dated 23.04.2018 for Rs. 3,50,000/- in favour of respondent, however the same was not encashed by respondent, therefore, complainant again approached respondent office and again prepared two demand drafts amounting to Rs. 3,80,000/- and Rs. 3,20,000/- respectively, both dated 21.07.2018 (annexed as Annexure-H), however, again the said demand drafts were not encashed by respondent. It is a matter of fact that complainant came forward to fulfill her obligation to pay the balance amount as per offer letter 16.09.2017, however it is the respondent who has not fulfilled its obligation to accept the balance payment and handover the possession to complainant.



33. Thus, on the basis of record on file placed by the parties, it is observed that the offer of possession dated 16.09.2017 was made after obtaining occupation certificate from the competent authority and demands were raised as per agreement for sale, therefore, it was a valid offer of possession. Admittedly, complainant has paid an amount of Rs. 20,83,996.62/- till date except the balance due amounting to Rs. 7,04,203.97/- as per offer letter dated 16.09.2017. Further, it is observed that upon the valid offer of possession on 16.09.2017, complainant came forward to pay the balance dues by preparing demand drafts dated 23.04.2018 for Rs. 3,50,000/- and thereafter, two demand drafts amounting to Rs. 3,80,000/- and Rs. 3,20,000/- respectively, both dated 21.07.2018, however, the said demand drafts were never encashed by respondent. Thus, it is the respondent who did not fulfill its obligation on time, firstly, by not handing over possession as per time stipulated in agreement and secondly, by not accepting the payment of balance dues from complainant. Thus, respondent is not entitled to charge the delay payment interest on outstanding dues of Rs. 7,04,203.97/- with effect from 21.07.2018, i.e., the date when complainant came forward to pay the remaining balance dues by preparing demand drafts. However, respondent is



- entitled to charge delay payment interest on outstanding dues of Rs. 7,04,203.97/- from date of valid offer of possession i.e., 16.09.2017 till 21.07.2018 as per RERA rate of interest i.e., 10.75%.
34. As far as the physical condition of the unit/flat is concerned, in order to ascertain the same, Authority has referred photographs annexed at Annexure-J which shows that the unit/flat of the complainant requires necessary repairs. 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 proper 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.
35. With regard to the issue of execution of conveyance deed, Authority is of the considered view that there is no impediment on execution of conveyance deed in favour of an allottee when allottee pays the full consideration and gets the possession. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. In the present case, complainant has yet to pay the outstanding dues in order to obtain the possession of allotted unit.



Thus, complainant is liable to pay the balance dues as communicated to her by respondent vide letter dated 16.09.2017 and thereafter complainant is entitled to possession of allotted unit. Thus, after delivery of actual physical possession of unit, the respondent-promoter is obligated/duty bound u/s 17 of the RERA Act, 2016 to execute a registered conveyance deed in favour of the complainant.

H. DIRECTIONS OF THE AUTHORITY

36. 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 is liable to pay an amount of **Rs. 12,67,758** /- as interest accrued at the prescribed rate of 10.75% for every month of delay on the amount paid by the complainants as per receipts annexed with complaint from the due date of possession, i.e., 09.01.2012 till 16.09.2017, i.e., upto the date of valid offer of possession after receipt of occupation certificate within 90 days from the date of uploading of this order.
 - ii. The complainant is also liable to pay the outstanding dues of Rs. 7,04,203.97/- communicated to her by respondent in offer letter



dated 16.09.2017 and respondent shall not charge delay payment interest from complainants with effect from 21.07.2018 as per the above observations made by the Authority.

- iii. Respondent shall hand over the possession of the unit on as and where is basis within 90 days of adjustment of account on payment of receivables and payables by both parties.
- iv. Respondent is directed to execute conveyance deed of the allotted unit in favour of complainant within 15 days of handing over of possession to the complainant. Complainant shall pay the required stamp duty/registration charges.
- v. Respondent is also liable to pay the imposed cost of Rs. 25,000/- payable to Authority vide order dated 28.07.2023 for not cooperating with the Authority and also to pay earlier imposed cost of Rs.2000/- payable to complainant as stated in order dated 27.04.2023 of Authority. The above mentioned costs shall be payable by respondent within 7 days of uploading of this order.

These directions are 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.



37. **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]