



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	107 of 2020
Date of filing:	22.01.2020
Date of first hearing:	27.02.2020
Date of decision:	22.08.2023

Dr. Rajinder Kalsi Patnaik,
W/O Dr. Bijaya Nanda Patnaik,
R/O C-2, G.K., Enclave-II,
New Delhi-110048

...COMPLAINANT

VERSUS

Piyush Buildwell India Limited,
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, counsel for the complainant through VC.
Mr. Gaurav Singla, counsel for the respondent.

ORDER(NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 24.02.2021 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, date of proposed 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-913, 9 th floor, Tower C



4.	Unit area	1576 sq. ft.
5.	Date of allotment	04.08.2007
6.	Date of builder buyer agreement	11.07.2008
7.	Due date of offer of possession	As per clause 27(a) of BBA- 36 months from date of execution of BBA i.e., 11.07.2011. <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.	Basic sale price	Rs.26,51,089/- (as alleged by complainant).
9.	Amount paid by complainant	Rs. 26,38,773.50p/-



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 "Piyush Buildwell India Ltd."
4. That a flat bearing no. C-913, Tower C on 9th floor was booked by complainant in the year 2006 in the project namely "Piyush Heights" of respondent at Faridabad, Haryana by paying a booking amount of Rs. 3,00,000/-. Thereafter, the said flat was allotted to the complainant vide allotment letter dated 04.08.2007 annexed as Annexure C.
5. That the basic sale price of the unit was Rs.26,51,089/- as per letter dated 04.08.2007 annexed as Annexure-H and in accordance with the payment plan, a total payment of Rs. 26,38,773.50p/- has been duly



made by complainant towards the sale consideration as per statement of account dated 15.09.2017 issued by respondent which is annexed as Annexure-I. A copy of receipts of payments made is also annexed as Annexure E.

6. That builder buyer's agreement inter-se the parties qua flat bearing no. C-913, Tower C on 9th floor in project "Piyush Heights" was duly executed on 11.07.2008. A copy of the agreement is annexed as Annexure D. 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 11.07.2011.
7. That respondent promoter issued a letter dated 15.09.2017 with the subject "offer of possession for flat no. C-1015, at "Piyush Heights", Sector 89, Faridabad, Haryana" accompanied with additional demands of Rs. 9,35,108.58/- without completing the construction work of the unit in question. A copy of the letter dated 15.09.2017 is annexed as Annexure C-4 and the pictures demonstrating the condition of the flat are annexed as Annexure-L.
8. That the complainant made a representation/letters dated 21.10.2017 and 29.11.2017 to the respondent, pointing out the anomalies in the



demands raised and the unfinished state of the flat. Copies of the said letters are annexed as Annexure-J and Annexure-K respectively. However, the complainant never received any reply from the respondent on her said representations/letters.

9. Despite the fact that the flat was not completed even after a long gap of eleven years by the respondent-builder, the complainant was being forced to take possession of it.
10. That the complainant had been constantly demanding the registration of the property in her name as per the agreement. However, respondent has also failed to get the flat registered in the name of the complainant.
11. That the respondent had to handover the possession in 2011, however, the respondent failed to do the same. Also, the entire construction of the flat is incomplete. There has still been no progress from the side of the respondent company. Whenever the complainant approached the office of the respondent, she was either sent away on one pretext or the other or the office was found closed/locked. Now, the future of the complainant and her ownership of the property has been clouded due to the carelessness of the builder/respondent company. Hence, this complaint.



C. RELIEF SOUGHT

12. In view of the facts mentioned above, the complainant has prayed for following reliefs:-
- a. Pass an order directing the respondents to get the registration of the flat (conveyance deed) done in the name of the complainant;
 - b. 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;
 - c. 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
 - d. 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:

13. In present case, respondent filed its reply on 26.08.2021 pleading therein:-



- 1) That a flat no. C-913, Sector-89, Piyush Heights, Faridabad was allotted to the complainant and the builder buyer agreement was signed on 11.07.2008.
- 2) That the complainant in her entire complaint has prayed for execution of conveyance deed in her favour while she is not in the possession of the flat yet.
- 3) That the complainant has alleged to have paid the entire amount but she never paid the entire amount of the flat and as per offer of possession, an amount of Rs 9,35,108.58 is still pending towards complainant that she has never paid, rather filed the present complaint after lapse of more than three years after an offer of possession.
- 4) That the complainant had not paid the balance amount which includes principal amount, holding charges, maintenance charges and the interest and other expenses also.
- 5) 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.

- 6) That in the complaint, complainant herself stated that the respondent-builder is forcing the complainant to take the possession, however, it is the complainant who did not come forward to take possession after paying outstanding dues. This shows the mal practice of the complainant and complaint should be dismissed on this ground. Also vide offer of possession letter dated 15.09.2017, it was requested to the complainant by the respondent to get the possession of the said flat and pay the balance dues and it was further requested to the complainant to get the registry done in her favour after paying the government charges but she never did anything.
- 7) Due to default on part of the complainant, respondent had to hold the flat, thus builder is entitled for holding charges.
- 8) 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.



- 9) 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.
- 10) 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.

11) 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.

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

E. AMENDED RELIEFS SOUGHT BY COMPLAINANT

14. Vide interim order dated 07.10.2020, Authority observed that 'the complainant has narrated two self-contradictory versions in the complaint. She has narrated in the body of complaint that the respondent has forced her to take the possession of the premises which has many deficiencies. However, in the prayer clause of the complaint, it was mentioned that complainant has already rectified the deficiencies and she shall be compensated for the loss incurred thereupon. The complainant was directed to clarify these contradictions and to amend her pleadings appropriately so that matter can be adequately decided.' Thus, in order to clarify such



contradiction in the pleadings, ld. counsel for the complainant has amended her relief clause vide application dated 18.01.2021 which are as follows:-

- (i) To pass an order directing the respondent to hand over the possession of the said flat to the complainant being the lawful owner of the same.
- (ii) Pass an order directing the respondent to withdraw the demand for additional deposit in lieu of maintenance and/or holding charges and/or any other additional charges along with interest and the property should be allocated to the complainant at the original cost as agreed upon in the agreement;
- (iii) Pass an order as against the respondent to compensate the complainant to the tune of Rs. 15 Laes 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;
- (iv) Pass an order directing the respondent that pursuant to handing over of possession, the registration of the flat (conveyance deed) be done in the name of the complainant;



- (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 above mentioned circumstances.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. 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 15.09.2017 accompanied with certain demands with respect to basic sale price, EDC/IDC, IFMS accumulated interest 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.

16. 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 15.09.2017. Offer of possession



was made in the year 2017 vide which size of the unit was increased from 1446.070 sq.ft. to 1576 sq.ft 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, 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.

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. 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 2006 and was allotted flat bearing no. C-913, Tower-C on 9th 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 11.07.2008; 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 Annexure H.
18. The grouse of the complainant is that against the original basic sale price of the unit amounting to Rs. 26,51,089/- as per payment plan in



letter dated 04.08.2007, complainant had already paid an amount of Rs. 26,38,773.50, as admitted in the statement of account dated 15.09.2017 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.9,35,108.58/- which are unreasonable and illegal.

19. 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. 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 15.09.2017 along with offer of possession demanding balance due amount of Rs.9,35,108.58/- annexed at annexure-I, raised additional demands. Thus, complainant allottee is before the Authority praying that the illegal charges as demanded by the respondent in letter dated 15.09.2017 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.



20. 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.
21. 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.
22. 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?

23. **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-D, 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-D, page-20 of the complaint, it is observed that the agreement was entered into between the complainant and the respondent on 11.07.2008. Meaning thereby, respondent was obligated to complete the unit/flat and hand over possession of the same by 11.07.2011 or in case of any force majeure situation by 11.01.2012. 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 11.07.2008 to 11.07.2011. Thus, respondent is not entitled to the benefit of grace period of six months and accordingly respondent was obligated to



offer possession of the unit of the complainant within 36 months of signing of agreement for sale i.e., by 11.07.2011.

24. 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(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.

25. **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 the size of the unit is mentioned as 1576 sq. ft. in the offer letter instead of 1446.070 sq. ft. Though photographs are attached with complaint file as annexure-L alleging deficiencies in flat in question, however, only few of the photographs are dated of the year 2019 i.e., after two years of offer of possession and few are undated and no other independent expert's report taken/obtained at the time when offer of possession was made, i.e., on 15.09.2017 which can help the Authority to ascertain that unit/flat of the complainant was not complete as per norms of the competent Authority, at the time of offer of possession on 15.09.2017. Further, complainant neither has mentioned in its pleadings nor placed on record of any document whereby showing/proving that he has at any appropriate forum challenged the grant of above occupation certificate dated 17.08.2017. It is also not the case of complainant that the increase in area offered was in contradiction to the area as provided in the occupation



certificate. In absence of any such document, proving the occupation certificate regarding the tower in which flat of the complainant is situated as illegal, there is no reason to doubt 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.

17. 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 Rs. 26,51,089/-. However, on perusal of allotment letter and agreement, the original size of the unit was 1446.070 sq. ft and rate of per sq ft amounts to Rs. 1500/- therefore, original basic sale price comes out to Rs. 21,69,105/-, which is



increased from Rs. 21,69,105/- to Rs. 24,00,480.45/- in statement of account annexed with offer letter dated 15.09.2017. It is pertinent to mention that the area of the unit has been increased from 1446.070 sq.ft. to 1576 sq.ft. after issuance of occupation certificate as admitted by both the parties. Statement of account annexed with letter dated 15.09.2017 at page no.50 of complaint also shows that flat size as 1576 sq.ft. and the basic sale price as Rs. 24,00,480.45/-, 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 was Rs.1500/- per sq.ft. Therefore, for an additional area of 129.93 sq.ft. @ Rs.1500/- per sq.ft., respondent was well within his rights to charge additional amount of Rs.1,94,895 /-. On perusal of statement of account annexed with letter dated 15.09.2017, it is apparent the respondent has charged the same plus Rs.36,480.45 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. 21,69,105/- to Rs. 24,00,480.45/-cannot be termed illegal.

27. 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 11.07.2011. 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 11.07.2011. 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.

28. 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/- (i.e., 1446.070sq ft. @Rs. 25 per sq. ft.), it is observed that as per "details of the residential flats" at page-33 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.
29. Last but not the least, on perusal of statement of account dated 15.09.2017, it is revealed that certain other additional demands were raised by respondent which the complainant alleges to be illegal and arbitrary. Authority observes that certain additional amounts were charged from complainant under the heading of cooking gas



connection charges, interest as on date and EEC & FFC charges. With respect to these, it is observed 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, 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.

30. With regard to an oral submission of ld. counsel of the complainant for an amount of Rs. 77,883/- charged as "interest accumulated as on date" component in statement of account dated 15.09.2017, 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 has simply alleged 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. Authority observes that if any interest accrued against the allottee for any default on his part, i.e., non-payment of installments on time vide letter dated 15.09.2017, the same could have been charged only at the rate prescribed under Real Estate (Regulation & Development) Rules, 2017.

31. Further, 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 demand. Here Authority observes 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.

32. 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. Admittedly, complainant has paid an amount of Rs. 26,38,773.50/- till date remaining the balance dues amounting to Rs. 9,35,108.58/- as per offer letter dated 15.09.2017. 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 never came forward to accept the possession after paying the outstanding dues. 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 and execution of conveyance deed in her favour. Since, it is the complainant who did not fulfil her part of obligation on time, she 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.

33. As far as the physical condition of the unit/flat is concerned, in order to ascertain the same, Authority has referred photographs dated year 2019 annexed at Annexure-L hints that the unit/flat of the complainant requires certain 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.

34. 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 not paid the entire consideration and not received the possession yet. Thus, complainant is liable to pay the balance dues and thereafter complainant is entitled to possession of allotted unit. Accordingly, 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.
35. Further, complainant is seeking compensation of Rs. 15 lakhs on account of repairs of the allotted unit and has also annexed a report dated 27.02.2021 showing an estimate of about Rs. 9,89,645/- for the balance finishing work to be done in the unit. Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of



compensation. Therefore, the complainant is at liberty to approach the Adjudicating Officer for seeking relief of compensation for the same.

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 directed to pay an amount of Rs.16,76,974/- 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., 11.07.2011 till 15.09.2017, 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 15.09.2017 as per the prescribed rate of interest provided under RERA Act and Rules made thereunder. However, the interest, if any, till 15.09.2017 shall only be charged on conveying the complainant the reasons/details of



default on part of complainant for charging the same. Further, the respondent shall not charge any holding or maintenance charges till the handing over of actual physical possession of the unit to complainant. Thereafter, the complainant is also liable to pay the outstanding dues, if any, communicated to him by respondent.

- 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.

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]