



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Lead Complaint no.:	805 of 2021
Date of filing:	10.08.2021
Date of first hearing:	05.10.2021
Date of decision:	03.10.2023

### 1. COMPLAINT NO. 805 OF 2021

Shalu Bansal & Himanshu Bansal,  
R/O C-42, Naraina Vihar,  
New Delhi-110028

...COMPLAINANTS

VERSUS

Piyush Buildwell India Limited,  
R/O A-16/B-1,  
Mohan Co-Operative Industrial Estate,  
Main Mathura Road, New Delhi-110044

.....RESPONDENT

### 2. COMPLAINT NO. 1978 OF 2023

Shalu Bansal & Himanshu Bansal,  
R/O C-42, Naraina Vihar,  
New Delhi-110028

...COMPLAINANTS

VERSUS

Piyush Buildwell India Limited,  
R/O A-16/B-1,  
Mohan Co-Operative Industrial Estate,  
Main Mathura Road, New Delhi-110044

.....RESPONDENT

**3. COMPLAINT NO. 1979OF 2023**

Shalu Bansal & Himanshu Bansal,  
R/O C-42, Naraina Vihar,  
New Delhi-110028

...COMPLAINANTS

VERSUS

Piyush Buildwell India Limited,  
R/O A-16/B-1,  
Mohan Co-Operative Industrial Estate,  
Main Mathura Road, New Delhi-110044

.....RESPONDENT

**CORAM:**            **Dr. Geeta Rathee Singh**            **Member**  
                         **Nadim Akhtar**                                **Member**

**Present:**    Ms. Aishwarya Dobhal, learned counsel for the complainants.  
                  Mr. Gaurav Singla, learned counsel for the respondent.

**ORDER: (NADIM AKHTAR - MEMBER)**

1. The complaint no. 805 of 2021 was filed by the complainant on 10.08.2021 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations,

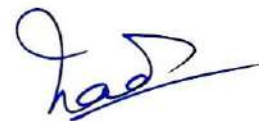


responsibilities and functions towards the allottees as per the terms agreed between them.

2. The said complaints involves three shops which were booked by the complainants in the project of the respondent and different builder-buyer's agreements were executed for said shops. Initially complainants had filed only one single complaint with respect to all three shops in question, i.e., complaint no. 805 of 2021. However, thereafter, in compliance of order dated 22.08.2023 of Authority, complainants have filed two other separate complaints in respect of each shop in question i.e., complainant no's 1978 of 2023 and 1979 of 2023 on 12.09.2023. Complaint no. 805 of 2021 is considered for one of the shop i.e., shop no. 2 and further filed complaint no's 1978 of 2023 and 1979 of 2023 are considered for remaining two shops i.e., shop no. 3 and 15 respectively in order to remove the technical lacunae in disposal of cases. Also, reply filed in lead complaint no. 805 of 2021 is considered as a consolidated reply for all the three complaints in respect of all three shops in question.

**A. UNIT AND PROJECT RELATED DETAILS OF SHOPS IN QUESTION**

3. The particulars of the units booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:



S.No.	Particulars	Details of shop no. 2 and 3 (Complaint no. 805 of 2021 and 1978 of 2023)	Details of shop no. 15 (Complaint no. 1979 of 2023)
1.	Name of the project	Piyush Colonnade	Piyush Colonnade
2.	Nature of the project	Commercial Project	Commercial Project
3.	Name of the promoter	Piyush Buildwell India Limited	Piyush Buildwell India Limited
4.	RERA registered/not registered	Unregistered	Unregistered
5.	Shop no.	2 and 3 at Ground Floor (booked in 2010)	15 at Ground Floor (booked in 2010)
6.	Shop Area	289.767Sq. ft. for each shop	300.850 sq. ft.
7.	Date of allotment	13.10.2010	19.12.2011
8.	Date of builder buyer agreement(hereinafter referred to as BBA)	23.05.2011	19.12.2011
9.	Deemed date of possession	23.05.2012  As per Clause IIIA(4)(a) of BBA - <i>That the First Party shall complete the development/construction of the 'said property' within a period of 12 months, subject to grace period of six months from the date of the signing of the</i>	19.12.2012  As per Clause IIIA(4)(a) of BBA - <i>That the First Party shall complete the development/construction of the 'said property' within a period of 12 months, subject to grace period of six months from the date of the signing of the</i>





		<i>Agreement, subject to force majeure conditions as mentioned in clause (b) hereunder 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 First Party shall be entitled to a reasonable extension of time for the delivery of possession of the said 'Unit' to the Second Party.</i>	<i>Agreement, subject to force majeure conditions as mentioned in clause (b) hereunder 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 First Party shall be entitled to a reasonable extension of time for the delivery of possession of the said 'Unit' to the Second Party.</i>
10.	Basic sale price	Rs. 10,47,146/-, for each shop	Rs.10,51,471/-
11.	Amount paid by complainants	Rs. 9,80,617/-, for each shop	Rs.970,691/-
12.	Possession obtained	March, 2017	March, 2017

4. The above-captioned complaints have been taken together as a bunch for disposal since nature and facts of these complaints are identical and relate to same project of the respondent namely: "*Piyush Colonnade*" and similar reliefs have been prayed by same complainants in all the above



captioned complaints and are represented by same counsel. **Complaint no. 805/2021** titled '*Shalu Bansal & Himanshu Bansal vs. Piyush Buildwell India Limited*' has been taken as lead case and facts of the lead case are recorded by the Authority in its orders.

**B. FACTS OF THE CASE AS STATED IN THE LEAD COMPLAINT**

**NO. 805/2021.**

5. That complainants booked a shop in assured rental scheme of the Real Estate project "Piyush Colonnade" located at Sector-89, Faridabad, Haryana and a shop no. 2 measuring 289.767 sq. ft. was allotted to the complainants vide allotment letter dated 13.10.2010 The said allotment letter is annexed as Annexure-A.
6. That builder buyer agreement was signed between the respondent and the complainants for shops no. 2 on 23.05.2011. Copy of said buyer agreement is annexed as Annexure-D.
7. As per Clause-III of the agreement, complainants have admittedly paid 90% of the total consideration and remaining amounts of 10% remains to be paid by allottees for the said shop. The said builder buyer agreement also clearly stipulates that the remaining payment was to be made by allottees at the time of possession.
8. That as per sub-clause (4)(a) of Clause IIIA of the builder buyer agreement, the complainants were entitled to possession of the said shop within 18 months of signing the builder buyer agreement.



9. That further as per sub-clause 4(c) of Clause IIIA of BBA, in case of delay of possession by respondent, the complainants were entitled to assured return @ Rs. 10 per sq. ft. per month from the date of signing of the agreement till the date of possession.
10. That the complainants kept waiting to receive possession of the said shop and despite waiting for more than 3 years, complainants did not get possession of the shop. Having no other options left, the complainants issued a legal notice dated 15.12.2015 to the respondent for demand of possession of the allotted shop which is annexed as Annexure-G.
11. That the complainants sent various reminders through emails to the respondent. However, complainants never received any response to the said reminders. Copy of the said e-mails are annexed as Annexure-H. Further, despite sending several reminders through mails, since 2014, the respondent never offered possession to the complainants.
12. That on the persistence of the complainants and after sitting in the respondent's office for hours at length, the officials of the respondent company handed over the keys of the shop to the complainants in March, 2017. The officials of the respondent company got a few documents signed by the complainants, however, copies of the same were never provided to them.
13. That despite handing over keys of the shop to the complainants, the respondent had not executed conveyance deed in respect of said shop in





favour of complainants. Soon, thereafter, the builder was taken into custody for several frauds committed by him.

14. That thereafter, when the complainants again approached the office of the respondent company requesting for execution of conveyance deed in respect of said shop, officials of the respondent company handed over further demand letter and statement of account dated 15.10.2019 to the complainants. Instead of paying penalty and assured rentals as mentioned in the agreement, the respondent levied interest upon the complainants. The complainants had admittedly paid 90% of the consideration amount on the first day of booking itself, whereas the remaining consideration was to be paid at the time of possession, which is also clearly mentioned in the builder buyer agreement. In the said demand letters, respondent also levied arbitrary and illegal holding charges on the complainants.
15. That when the complainants pointed out that they had sent several mails reminding the respondent builder to hand over possession, the official at the respondent company removed the holding charges and issued new demand letters, still demanding enormous arbitrary amounts from the complainants.
16. That the demands for interest on EDC, ADC, IFMS and power backup were unexplained as the respondent had never officially offered possession to the complainants. The respondent levied power backup charges in the statement whereas no power backup facility was provided





in the said shops. The respondent further levied IFMS which is supposed to be returned back to the customers after two years; however, they failed to explain how the same shall be returned with the builder being in jail. Unjustified additional development charges were also levied without any development and justification. Copies of the said demand letters and statements of accounts, all dated 15.10.2019 are annexed as Annexure-I (Colly).

17. Despite shop not being complete, even after a long gap of more than 10 years, complainants were compelled to take possession of the same. The said possession of shop was also taken on the insistence of the complainants, whereas no offer of possession was made by the respondent. Copies of pictures of the said shop in their present condition are annexed as Annexure-F. Complainants have been left in the lurch by the respondent company as they have been constantly demanding the registration of the property in their name as per the agreement. However, the builder has not only failed to get the shop registered in the name of the complainants but has also been levying arbitrary charges and interests on the complainants.

18. That there has still been no progress from the side of the respondent company. Whenever the complainants approached the office of the respondent, they were either sent away on one pretext or the other or the office was found closed/locked. Neither of the concerns of the



complainants regarding payments addressed nor was their shop registered in their favour.

19. That the complainants were, therefore, left with no other option but to approach this Authority. Hence, this complaint.

**C. RELIEF SOUGHT**

20. In view of the facts mentioned above, the complainant prays for the following relief(s):-

- i) Pass an order to formalize the possession of the said flat in the hands of the complainants 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 charges, holding charges, and/or any other additional charges alongwith 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 make payment to the complainants in lieu of the pending assured rentals alongwith interest;
- iv) Pass an order as against the respondent to compensate the complainants to the tune of Rs. 15 Lacs for delay in possession, for out of pocket expenses of the complainant to be spent in getting basic construction work completed and for causing harassment and mental agony to the complainants;



- v) Pass an order directing the respondent to get registration of shop done in the name of the complainants; and/or
- vi) 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 SUBMITTED ON BEHALF OF RESPONDENT**

21. Learned counsel for the respondent filed a reply on 16.05.2023 in the complaint no. 805 of 2021 which is later on considered as consolidated reply of respondent in all the three complaints with respect to three shops in question as per order dated 13.09.2023 of Authority in order to ensure the speedy justice to the aggrieved allottees. Vide said reply, respondent pleaded as follows:-

- 1) That a shop no. 2 at ground floor in Sector-89, Piyush Colonnade, Faridabad was allotted to the complainants on 13.10.2010 and thereafter the builder buyer agreement was signed on 23.05.2011.
- 2) That the complainants had paid certain amounts but they never paid the entire amount of the shop and it was also admitted by the complainants in their complaint that the complete payment was never paid to the builder, despite that they received the assured returns from the respondent. Further, complete receipts of the payments are not attached with the complaint.





- 3) That in the month of January 2016, fit out possession was offered to the complainants and thereafter an offer of possession letter dated 24.08.2017 was issued to the complainants after receiving the occupation certificate along with request to complainants to clear the balance dues and get the conveyance deed done in their favour and this fact is admitted by the complainants that they received the keys of shop in the year 2017 from the respondent.
- 4) That the complainants are in the illegal possession of the shop as they had not paid the balance amount, i.e., principal amount, holding charges, maintenance charges, interest and other expenses. Also as per the builder buyer agreement, actual physical possession will be delivered and title will be transferred in their name only on the payment of entire sale consideration, however, in the present cases it was admitted by the complainants that entire payment was not made to the builder.
- 5) That the present complaint can be dismissed on the grounds that neither proof of payments has been attached by the complainants nor complete documents have been placed on record by them, rather complainants are seeking the possession of the finished flat and registration of its conveyance deed despite knowing that it is the case of shop.
- 6) That respondent-builder has no objection or hesitation to get registry of the shops done if the complainants agrees to pay the balance amount including the holding charges alongwith interest, maintenance charges



with interest which are due upon the buyers/complainants. The builder has no objection if the complainants pay the registry charges/stamp duty directly in the office of Registrar.

- 7) That the complainants never approached the respondent to get the registry done in their favour despite so many requests and due to default on part of the complainants, respondent had to hold the shop, 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 the reply. One of the directors namely, Mr.Puneet Goyal had expired during custody period.
- 9) That after arrest of the directors, one RWA was constituted, which illegally handed over the possession of the flats and shops to the buyers despite knowing the fact that payments were still due towards the allottees. As soon as 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.
- 10) 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 was already sealed by the other government authorities and whole record was 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.

- 11) That the entire record of the company is under the possession of the one resolution professional namely Sh. Swami Deen Gupta who was appointed by the National Company Law Tribunal and several time requests were made to him for providing the photo copies of the record or send the record directly to Authority, but all in vain.
- 12) In fact, all the complainants made hue and cry when the respondent/directors were taken into judicial custody in the year 2018. Prior to that all complainants were silent and it was the respondents who requested the complainants to get their registry done after making the balance payments but no one came forward at that time. The copies of the reminder are attached as Annexure R-1
- 13) 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.
- 14) In view of above submissions, it has been prayed that present complaint be dismissed.





**D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS  
AND RESPONDENT**

22. During oral arguments ld. counsel for complainants and respondent reiterated their respective arguments as stated in their written submissions.
23. Further, ld. Counsel for complainants stated that no offer of possession letter was received by complainants, however, the statement of account dated 15.10.2019 issued by respondent contain certain arbitrary demands with respect to EDC, ADC, IFMS, accumulated interest and powerback up charges which are unreasonable and unjustified. Also, respondent has issued final demand cum cancellation notice to complainants on 09.03.2023 claiming balance dues including the holding charges which are also completely unreasonable.
24. Learned counsel for complainants stated that complainants have already taken possession of shop in March, 2017, however, respondent has failed to give assured returns to complainants as agreed in the agreement for sale. Also, shop is not completely constructed and still accompanied with deficiencies. Despite repeated requests, conveyance deed has not been executed by respondent in favour of complainants till date. Thus, she prayed for withdrawal of the impugned demands, and execution of conveyance deed in favour of complainants.



25. In response, learned counsel for respondent, Mr. Gaurav Singla, stated that shop was complete in all respects and ready for usage at the time of offer of possession made in the year 2017 after receiving the occupation certificate. However, complainants did not come forward to pay the outstanding dues till date despite taking the possession of shop in the year 2017. 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 flats, shops and damaged them. 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 paid the outstanding dues as per statement of account dated 15.10.2019 and filed the present complaint for execution of conveyance deeds without paying the outstanding dues till date. Now at this stage, after expiry of more than 3 years of receiving possession, the conduct of the complainants along with RWA cannot be attributed to the respondent-builder. It is also not at all justified and convincing to make respondent liable to compensate complainants for deficiencies in shops; to execute conveyance deed without receiving the balance dues from complainant including the holding charges.



**G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

26. Authority had gone through documents on record and heard the arguments of the ld. counsels for the parties. Upon perusal of file, the Authority observes that it is not disputed by the parties that the complainants booked shop no. 2 in the year 2010 in the commercial project "Piyush Colonnade" 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 complainants and the respondent on 23.05.2011; as per the agreement, possession of the completed shop was to be handed over to the allottees within 12 months from the date of execution of buyer's agreement or within an extended period of six months, subject to force majeure conditions.
27. The grouse of complainants is that against the total sale price of the shop, complainants had already paid 90% of amount as admitted by respondent in builder buyer agreement. Respondent has issued two statements of accounts and both are dated 15.10.2019. As per first statement of accounts dated 15.10.2019 issued by respondent (annexed at page no. 78), amount due to be paid by complainant-allottees on the date of offer of possession i.e., on 17.09.2017 amounts to Rs. 2,33,492/-. Subsequently, in second statement of accounts again issued by respondent on 15.10.2019 (annexed at page no. 82 of complaint), additional charges on





account of EDC, ADC, IFMS and power backup charges were raised which are completely unreasonable and illegal.

28. Complainants have further alleged that though the possession was taken in March 2017, but the same was given without completing the construction work of the shops in question. Thus, complainant-allottees are before the Authority praying that the illegal charges as demanded by the respondent in second statement of account dated 15.10.2019 be set aside and respondent be directed to execute conveyance deed of shop in favour of complainants. Further, they seek relief of delay possession interest in lieu of pending assured rentals along with interest.
29. 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.
30. 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, respondent has been burdened with the responsibility and expenses of holding the shop for complainants. Respondent promoter has further stated that it has no objection or hesitation in getting the registry of the said shops done in favour of complainants if complainants agree to pay the balance amount including



holding charges and maintenance charges, apart from other charges due upon the complainants.

31. Authority observes that admittedly physical possession of the shop in question was taken by complainants in March 2017. Complainants have alleged that at the time of offer of possession, respondent company has got few documents signed by them, copies of which were never provided to them by respondent. No such documents were placed on record by either of the parties. Though, an offer of possession was alleged to be made vide letter dated 24.08.2017 after receiving occupation certificate, however, said offer letter and occupation certificate have not been placed on record by either of the parties. Further, grant of occupation certificate was never disputed by complainants in their pleadings nor have they placed on record any document whereby showing/proving that they have at any appropriate forum challenged the grant of occupation certificate.

32. In view of the above circumstances, now there are two main issues for adjudication before this Authority (i) Whether there has been any delay in handing over of possession of shop to complainants? (ii) Whether complainants had paid the amount of sale consideration which was due at the time of offer of possession?

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



33. In this regard, Authority observes that buyer's agreements in respect of shop no. 2 was executed on 23.05.2011 and as per clause-III-(4)(a), the respondent promoter undertook to complete the development/construction of the shop within 12 months from the date of signing of agreement or within an extended period of 6 months, subject to force majeure conditions, meaning thereby, respondent was obligated to complete the shop and hand over possession of shop by 23.05.2012 or in case of any force majeure situation by 23.11.2012. It is observed that respondent has not placed on record any document to show or prove existence of any force majeure condition during the intervening period. Thus, respondent is not entitled to the benefit of grace period of six months.
34. Allegedly an offer of possession letter was issued by respondent on 24.08.2017; however, said offer letter has not been placed on record by either of parties. Thereafter, on perusal of first statement of accounts dated 15.10.2019 (placed at page no. 78), Authority observes that respondent has admitted to have made an offer of possession 17.09.2017 for shop in question. Therefore, the date of offer of possession is considered as 17.09.2017. The said offer was made 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 shop as per the time period stipulated in the buyer's





agreement and by virtue of Section-18(1) of RERA Act, 2016, complainants are entitled to the relief of interest as per prescribed rate for the delayed period.

35. Admittedly, complainants had paid an amount of Rs. 9,80,617/-with respect to shop no. 2 as per statement of account dated 15.10.2019 issued by respondent annexed at Page no. 82. The said amount was paid by complainants before the date of offer of possession. Therefore, interest has been calculated on the amount admitted by the respondent to be paid to complainants at prescribed rate of interest under Rule 15 of HRERA Rules, 2017. As per State Bank of India website i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

36. Therefore, the delay possession interest payable by respondent has been calculated by Accounts Branch of Authority at the rate of 10.75% from due date of possession i.e., 23.05.2012 till date of offer of possession, i.e., 17.09.2017 which comes out to be **Rs.561,450/-**.

**Issue no. (ii) Whether complainants had paid the amount of sale consideration which was due at the time of an offer of possession?**

37. Perusal of statement of accounts dated 15.10.2019 annexed at Page no. 78 of complaint reveals that an offer of possession was made on 17.09.2017.



As per said statement of account, complainant had paid 25% sale consideration including taxes at the time of booking, 70% of amount was paid within 45 days of booking and remaining 5% of sale consideration amounting to Rs. 2,33,492/- (i.e., Rs. 2,17,324/- due instalment+ Rs. 16,168/- due tax) was due on 17.09.2017, i.e., on date of offer of possession. However, no document/ receipt/ proof of payment is placed on record by complainants showing the payment of said amount till date despite receiving the possession of shop in March 2017. Therefore, complainants are obligated to pay the same along with interest on delayed payment as per prescribed rate of interest provided under RERA Act and Rules made thereunder.

38. The amount stated to be due on date of offer of possession, i.e., 17.09.2017 as per statement of account dated 15.10.2019 was the last amount due towards complainants and subsequently if there would have been any other liability of complainants raised towards shop allotted on account of any reason either enhanced area or enhanced EDC or taxes or any other additional charges, that amount would have been reflected by respondent in the same statement of account as a consolidated amount due on 17.09.2017, however, no other amount is reflected to be due on 17.09.2017 in this statement of account apart from Rs. 2,33,492.80/-. Therefore, statement of account dated 15.10.2019 issued subsequently by respondent for shop no. 2 (annexed at page no 82), wherein respondent



had raised charges on account of EDC/IFMS/Power backup/service tax/interest cannot be considered as valid and are hereby discarded by the Authority as arbitrary and illegal.

39. Further, complainants alleged that though they had taken possession of shop, however, the same was without completion of the construction work and accompanied by illegal demands. Here Authority observes that since possession was taken in March 2017, which is not disputed by any of the parties, complainants were liable to point out deficiencies at very point of time of taking possession, however, in the present case, complainants neither paid the balance due on offer of possession as stated in statement of account dated 15.10.2019 nor contested the same before an appropriate forum. It is a matter of fact that complainant never contested the same before any forum and taken the possession without paying remaining consideration.

40. Thus, in view of above observations, balance amount due on offer of possession as stated in statement of account dated 15.10.2019 amounting to Rs. 2,33,492.80/- for shop no. 2 is payable by the complainants along with interest. The rate of interest chargeable by the respondent- promoter on account of delay payment by the complainants shall be equitable as per section 2(zb) of the Act of 2016 on the date of order i.e., SBI MCLR+2% i.e., 10.75% (8.75%+2%).





41. Complainants have also prayed for relief of assured returns from date of signing of builder-buyer's agreement till the date of possession. However, during arguments Id. counsel for complainants has foregone the claim of assured returns in the present case in view of the fact that the matter regarding jurisdiction of this authority to decide the matters pertaining to assured returns is pending before Hon'ble Punjab and Haryana, High Court vide *CWP No. 26740-2022 ( O&M) titled as Vatika Ltd v. Union of India.*
42. Further, complainants are seeking compensation of Rs. 15 lakhs on account of completing the construction of shops out of pocket expenses. In this regard, Authority observes that Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are at liberty to approach the Adjudicating Officer for relief of compensation.
43. 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 allottees when allottee pays the full consideration and gets the possession. Subsequent to this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. 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. In the present case, though complainants have taken the possession, but they not paid the entire consideration. Thus, complainants are liable to pay the balance dues and thereafter respondent shall be obligated to get the execution of conveyance deeds in their favour.

#### H. DIRECTIONS OF THE AUTHORITY

44. Hence, 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.561,450/- in respect of shop no. 2 and 3 each** for the period 23.05.2012 till 17.09.2017 and an amount of **Rs.4,95,731/- in respect of shop no. 15** for the period 19.12.2012 till 17.09.2017, calculated at prescribed rate of interest, i.e., 10.75% as delayed interest. These amounts are payable by respondent within 90 days of uploading of this order.
- ii. Complainants are also liable to pay the balance amount of sale consideration amounting to Rs.2,33,492.80/- for shop no. 2, Rs. 2,33,492.80/- for shop no. 3, and Rs. 2,39,339.92/- for shop no. 15 along with interest. These amounts are payable as per statements of



account dated 15.10.2019 in respect of said three shops in question annexed at page no. 78, 83 and 77 of complaint respectively.

- iii. With regard to the 'interest' on delayed payment, respondent shall calculate the interest accrued towards complainants from due date of payment till date of order as per the prescribed rate of interest provided under RERA Act and Rules made thereunder and convey the same to complainant within next 30 days. Accordingly, the rate of interest chargeable by the respondent- promoter shall be as per section 2(za) of the Act of 2016 on the date of order i.e., SBI MCLR+2% i.e., 10.75% (8.75%+2%).
- iv. Respondent is directed to execute conveyance deeds of shop no's. 2, 3 and 15 in favour of complainants within 30 days of adjustment of account on payment of receivables and payables by both parties
- v. The respondent shall not charge any holding charges from complainants.
- vi. Further, the respondent shall not charge anything from the complainants which are not part of the agreement to sell.
- vii. Respondent is also liable to pay the following costs imposed, i.e., cost amounting to Rs. 2,000/- payable to complainants imposed vide order dated 27.09.2022; additional cost amounting to Rs. 10,000 payable to Authority and Rs. 5000/- payable to complainants imposed for non-filing of reply in time imposed vide order dated 31.01.2023; further





additional cost of Rs. 5,000 payable to Authority and Rs. 2000/- payable to complainants imposed for non-filing of reply in time vide order dated 27.04.2023, thereafter, cost of Rs. 25000/- imposed vide order dated 28.07.2023 for not cooperating with the Authority, thus total amounting to **Rs. 40,000/-** payable to Authority and **Rs. 9000/-** payable to complainants. The above mentioned costs shall be payable by respondent within 15 days of uploading of this order.

These directions are without prejudice to the right of the complainants to claim compensation for deficiencies in the shops under the provisions of the RERA Act, 2016.

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



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Dr. GEETA RATHEE SINGH  
[MEMBER]



.....  
NADIM AKHTAR  
[MEMBER]