



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	990 of 2020
Date of filing:	17.09.2020
Date of first hearing:	19.11.2020
Date of decision:	22.08.2023

Dr. Anita Patnaik,
D/o Sh. K.A. Patnaik,
R/o D2/73, Kidwai Nagar West,
Sarojini Nagar,
New Delhi-110023

...COMPLAINANT

VERSUS

M/s Piyush Buildwell India Ltd.
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, ld. 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 17.09.2020 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 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.	B-913, 9 th floor, Tower B
4.	Unit area	1576 sq.ft.(Original area-1446.070 sq.



		ft.)
5.	Date of allotment	04.08.2007
6.	Date of builder buyer agreement	27.03.2008
7.	Due date of offer of possession	As per clause 27(a) of BBA- 36 months from date of execution of BBA i.e., upto 27.03.2011. Relevant clause is as under <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.19,52,195/- as per statement of account dated 24.05.2013
9.	Amount paid by complainant	Rs.20,47,591/-
10.	Offer of possession	17.11.2014
11.	Occupation Certificate	Received on 23.11.2014 w.r.t Tower-B, E, M and N 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 B-913, 9th Floor, Tower-B was booked by the complainant in the year 2006 by paying a booking amount of Rs. 3,00,000/- on 22.12.2006 (annexed at page 21) 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 04.08.2007. A copy of the said allotment letter is annexed as Annexure-C2 at page no. 22.
5. That the complainant mortgaged the said flat to LIC Housing Finance Ltd. (LICHFL) to obtain home loan from it. The statement of loan account dated 12.10.2015 issued by LICHFL demonstrate the payments made to respondent from LICHFL. A copy of statement of loan is annexed at page no. 25 to 33 of complaint.



6. That the complainant regularly paid the dues to the respondent in a timely manner. A copy of statement of account dated 20.03.2012, annexed at page no. 34, issued by the respondent demonstrates the said payments. Despite the fact that complainant made all the payments on time, respondent raised an arbitrary demand for payment of interest vide its letter dated 24.05.2013 annexed at page no. 25 of complaint. In response, complainant sent an e-mail dated 12.06.2013 to the respondent, pointing out the delay of 3 years in handing over the possession of the fully-finished and furnished flat and unprecedented increase in the interest made by the respondent when the allottee had already paid 60% of the total amount. The complainant also pointed out that the delay in possession had added to her loan and tax related problems. However, no response was received from respondent to the said e-mail of the complainant.
7. That the respondent allegedly issued an offer of possession letter dated 17.11.2014 to the complainant; however the said alleged letter was never received by the complainant. The complainant came to know about the said offer of possession letter from another letter dated 01.09.2015 accompanied with statement of account dated 17.11.2014 issued by the respondent builder. The said letter dated



01.09.2015 was not accompanied by the offer of possession letter. Vide statement of account dated 17.11.2014 several additional charges for facilities were charged that were never provided which led to a huge inflation in the original price of the flat as compared to basic sale price of Rs. 19,52,195/- stated in statement of account dated 20.03.2012 issued by the respondent.

8. That the complainant constantly wrote e-mails to the representatives of respondent company asking for breakup of dues that were demanded by the respondent and for receipts of payments made from LICHFL to the respondent. That the complainant also informed about no demand of instalment raised by the respondent and complainant has freezed her loan account due to irregular demands raised from the respondent.
9. That vide letter dated 01.09.2015 respondent had raised an illegal and arbitrary demand of holding charges amounting to Rs. 22,450/-. In the said letter, the respondent also offered to waive off holding charges on payment of complete outstanding dues of Rs.15,42,098.24/- by complainant as per statement of account dated 17.11.2014.
10. That the respondent issued fresh demand letter vide e-mail dated 10.09.2015 and asked the complainant to regularize her loan account.



In response to the email dated 10.09.2015, the complainant sent mail to the respondent stating that the demands raised by respondent were not construction linked and were highly inflated as compared to the status of construction of the flat. Complainant further stated that the respondent has already delayed in handing over the possession to complainant for about 8 years and expressed her willingness to inspect the flat premises.

11. That the complainant inspected her flat on 25.09.2015 and pointed out that the flat was unfinished, poorly constructed and the facilities for which charges were raised had not even been constructed. These discrepancies were duly stated by her in e-mail dated 27.09.2015 to the respondent.
12. That against the original price of the unit, complainant has already paid an amount of Rs. 20,47,591/-. However, instead of asking for balance dues, the respondent has inflated the price without completing the construction of flat.
13. That complainant approached the office of the respondent, however, she was either sent away on one pretext or the other or the office was found closed. Neither of the concerns of the complainant regarding

had

payments, completion of flat, registry of unit in the name of the complainant were ever addressed. Hence, the present complaint.

C. RELIEFS SOUGHT

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

- i. Pass an order directing the respondent to withdraw the demand for additional charges in lieu of additional facilities that were never provided;
- ii. Pass an order directing the respondent to withdraw 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;
- iii. Pass an order directing the respondent to get the registration of the flat (conveyance deed) done in the name of the complainant;
- iv. Pass an order as against the respondent to compensate the complainant to the tune of Rs. 30 Lacs for delay in possession, for out of pocket expenses of the complainant which shall be 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:

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

- 1) That a flat no.B-913, Sector-89, Piyush Heights, Faridabad was allotted to the complainant vide allotment letter dated 04.08.2007 and the builder buyer agreement was signed on 27.03.2008.
- 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 as the possession was never handed over by the respondent company when the Directors of the company were in the jail.
- 4) That letter of offer of possession was issued to the complainant in the year 2014 along with the demand of outstanding dues



amounting to Rs. 15,42,098/- , but the complainant never paid the said dues. For the execution of conveyance deed in her favour, instead of paying balance dues as per offer letter, she kept mum for quite long time and after a gap of 6 years filed the present complaint before this Authority without paying the balance amount.

- 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 along with interest, maintenance charges upto March 2018 along with interest, and other charges such as registry charges/stamp duty etc. which are due upon the buyer/complainant.
- 6) That the complainant without possession and without paying the entire amount of the flat is claiming the execution of conveyance deed in her favour, 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.

- 7) That in the present complaint certain documents were attached as annexures upon which complainant has relied her reliefs , however such documents are forged and fabricated as these were never issued by the respondents or their authorized representative to anyone, this shows the mal practice of the complainant and complaint should be dismissed on this ground also.
- 8) Due to default on part of the complainant, respondent had to hold the flat, thus respondent is entitled for holding charges.
- 9) 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.
- 10) 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.

11) 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.

12) 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.



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

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

16. 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 no offer of possession letter was received by complainant. However, the statement of account dated 17.11.2014 issued by respondent contain certain demands with respect to basic sale price, EDC/IDC, IFMS, accumulated interest and other charges which are excessive and unjustified. Also, respondent has issued final demand cum cancellation notice to complainant on 09.03.2023 claiming balance dues including the holding charges amounting to grand total of Rs. 42,33,307/- which are completely unreasonable.

Learned counsel for complainant further stated that complainant wants to take possession of her flat and execution of conveyance deed in her favour. However, due to some deficiencies and unjustified demands raised by the respondent, possession is not taken. Thus, she



prayed for withdrawal of the impugned demands and for execution of conveyance deed in favour of complainant.

17. Per contra, learned counsel for respondent, Mr. Gaurav Singla, stated that flat was complete in all respects and ready for usage at the time of issuance of offer of possession letter dated 17.11.2014 after receiving the occupation certificate from DTCP, Haryana on 23.11.2014 wherein size of the unit was increased from 1446.070 sq. ft. to 1576 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. The default on part of the complainant can 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. Thus, now at this stage, after expiry of more than 6 years of offer of possession, conduct of complainant cannot be attributed to respondent to make respondent liable to compensate complainant for deficiencies in flat; to handover possession and to execute conveyance deed without receiving the balance dues from complainant including the holding charges.



F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

18. Authority had gone through documents on record and heard the arguments of the ld. counsels for both 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.B-913, Tower-B 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. Builder buyer agreement was executed inter-se the complainant and the respondent on 27.03.2008 as per which, 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 on 17.11.2014 which the complainant alleged to have never received by her.
19. Complainant alleged that construction work of the unit in question was not complete and accompanied with certain deficiencies which were also pointed by her vide mail dated 27.09.2015 to respondent. Since, the unit in question suffered deficiencies and the statement of



account dated 17.11.2014 was accompanied by illegal demands, complainant did not pay the said amount and is before the Authority praying that the illegal charges as demanded by the respondent in statement of account dated 17.11.2014 be set aside and respondent be directed to execute conveyance deed in favour of complainant. Further complainant has filed an application dated 29.03.2023 praying that respondent be debarred from cancelling the allotment in favour of complainant in view of final demand notice cum cancellation notice issued by respondent on 09.03.2023.

20. 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 allegedly made vide letter dated 17.11.2014 along with statement of account was a valid offer of possession or not? (iii) Whether any illegal demands have been made by respondent promoter from the complainant or not?

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 dated 27.03.2008, 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, it is observed that the agreement was entered into between the complainant and the respondent on 27.03.2008. Meaning thereby, respondent was obligated to complete the unit/flat and hand over possession of the same by 27.03.2011 or in case of any force majeure situation by 27.09.2011. It is observed that respondent has not placed on any document to show or prove existence of any force majeure condition during the intervening period, i.e., between 27.03.2008 to 27.03.2011. 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 27.03.2011. However, offer was not made within the stipulated time. 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. Allegedly an offer of possession was sent to complainant vide letter dated 17.04.2014. However same was never received by her.



Complainant in her complaint has admitted to have got to know about issuance of this offer of possession dated 17.04.2014 only vide demand letter dated 01.09.2015. Authority observes that respondent could not prove service of letter dated 17.11.2014 and complainant got to know about the factum of offer of possession on 01.09.2015. Therefore, she is entitled to delayed interest till 01.09.2015.

However, Authority observes that the builder buyer agreement was executed between the parties on 27.03.2008, i.e., prior to enactment of RERA Act, 2016, with mutual consent and is free from any of the vices of the Contract Act, 1872 viz. misrepresentation, fraud, coercion and undue influence. Since the Authority observed that the agreement is sacrosanct and its covenants cannot be re-written, thus the delay penalty should be granted in terms of the covenants of the agreement. In this regard, Authority has referred a judgment of Hon'ble Apex Court titled as *Ganga Dhar Vs. Shankar Lal and others AIR 1958 SC 770* in which the Hon'ble Supreme Court had held that '*since the agreements were legal and valid, executed between the parties, thus the term and condition of the agreement containing 85 years clause as a period of redemption would not render it illegal ipso-facto*'. Thus,



the covenants of such agreements must prevail for deciding the rights between them.

Perusal of buyer's agreement reveals that clause of delay penalty has been specifically incorporated in clause 27(f) of said agreement and fact remains that both parties had mutually agreed upon the part that there can be delays in the project and for the same complainant allottee would be compensated at a rate agreed mutually between parties which in this case is Rs 5 per sq. ft. per month. Thus, in the present case delay penalty should be paid as per the terms and conditions of the agreement as the occupation certificate was received and an offer was made before the commencement of RERA Act 2016. Thus, by virtue of clause 27(f) of agreement dated 27.03.2008, complainant is entitled to the relief of interest from the deemed date of possession, i.e., 27.03.2011 till the date of offer of possession was communicated to her i.e., till 01.09.2015 (53 months and 6 days) @ Rs 5 per sq. ft. per month for an area measuring 1576 sq.ft. which amounts to **Rs.4,19,216/-**



Issue no. (ii): Whether the offer of possession allegedly made vide letter dated 17.11.2014 was a valid offer of possession or not.

It is the case of the complainant that she never received an offer of possession dated 17.11.2014. However, she came to know about alleged offer of possession on 01.09.2015 when statement of account dated 17.11.2014 was received by her along with letter dated 01.09.2015 for demand of interest on due amount from respondent. Further, complainant stated that unit in question is not complete and statement of account dated 17.11.2014 was accompanied by certain illegal and arbitrary demands. It is pertinent to mention that respondent had already received occupation certificate bearing no. ZP-261/SD(DK)/2014/26201 dated 23.11.2014 for Tower no's. B, E, M & and allegedly respondent offered possession to complainant on 17.11.2014. However, both the parties have failed to place on record offer of possession dated 17.11.2014. Complainant has alleged that she never received such offer letter and respondent has taken a plea that entire record of the respondent company is in the custody of Enforcement Directorate as stated by respondent, therefore it is not in a position to place on record the aforesaid letter.



On perusal of documents of record, Authority observed that admittedly complainant had received a letter dated 01.09.2015 from respondent for payment of outstanding demand and taking of possession after clearing all dues. Perusal of said letter clearly states that an offer of possession has already been made by respondent on 17.11.2014, which the complainant has alleged to have been never received from respondent till date. The relevant para of said letter is reproduced for ready reference:-

Please be informed that vide our letter dated 17.11.2014 we had offered the possession of the booked Flat to you and since you did not take completed the process of possession and have not paid the amount demanded in our said letter to you, an amount of Rs. 22450.00 + S.Tax (As Applicable) has accumulated, which you are liable to pay as on date on account of Holding Charges. However as mentioned above, vide this letter and under this Extended Holi Celebrations Offer, your payment of Holding Charges will be completely waived off, if you make the entire payment for possession of your Flat as demanded in our above mentioned letter of Possession with interest (if any), within 15 days of date of this letter.

Please be aware that this is a onetime offer for the limited period and no discount or waiver shall be applicable after the expiry of this offer. So hurry up and make the payment immediately to avail this offer.

It clearly depicts that respondent has made an offer of possession on 17.11.2014. Even if complainant had not received such offer letter, complainant has got the knowledge of issuance of offer of possession



letter by respondent on receiving a letter dated 01.09.2015 accompanied with statement of account dated 17.11.2014. Despite been informed of the fact that offer of possession letter has already been issued by respondent on 17.11.2014 and receiving statement of account, complainant did not come forward to pay the outstanding dues and take the possession, nor did she contest such offer letter and statement of account alleging illegal demands before any appropriate forum.

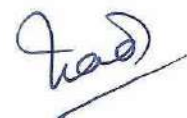
Further, in order to ascertain whether the offer of possession allegedly made vide letter dated 17.11.2014 was a valid offer of possession or not, Authority observes that an offer was made after the issuance of occupation certificate accompanied with the statement of account dated 17.11.2014. Size of the unit in the said statement of account is mentioned as 1576 sq. ft. instead of 1446.07 sq. ft. which was increased after issuance of occupation certificate. 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 17.11.2014. 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 17.11.2014. It is a matter of public 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, therefore there cannot be a presumption made against such document/certificate.

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 in statement of account dated 17.11.2014 along with the offer of possession and does the offer of possession dated 17.11.2014 validly communicated vide demand letter dated 01.09.2015 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.24,34,179/-. 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. 1350/- therefore, original basic sale price comes out to Rs.19,52,194.5, which is increased to Rs. 21,43,477.36/- in statement of account dated 17.11.2014 annexed at pg. 37 of complaint. It is pertinent to mention that the area of the unit has been increased from 1446.070 sq.ft. to 1576 sq.ft. in statement of account dated 17.11.2014 which shows the flat size as 1576 sq.ft. after issuance of occupation certificate, 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.1350/- per sq.ft. Therefore, for an additional area of 129.93 sq.ft. @ Rs.1350/- per sq.ft., respondent was well within his rights to charge additional amount of Rs.1,75,405.5/-. On perusal of statement of account dated 17.11.2014, it is apparent the respondent has charged the Rs.21,27,600/- plus Rs.15,877.36/- 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 to Rs. 21,43,477.36/- (for an area of 1576 sq.ft. @ Rs.1350/- per sq.ft.), cannot be termed illegal.

21. Further, complainant has verbally alleged that respondent has illegally increased EDC & IDC in statement of account dated 17.11.2014. 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 27.03.2011. 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 27.03.2011. 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, it was the obligation of the 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.

22. Furthermore, with respect to the allegation of illegal demands of interest free maintenance security to the tune of Rs.43,897.79/- instead of Rs.36,152 /-(i.e., 1446.070 sq ft. @Rs. 25 per sq. ft.), it is observed that 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 statement of account dated 17.11.2014 has charged the same plus Rs.4497.51 /- as service tax on the said amount. Therefore, this component of the demand cannot be termed illegal and arbitrary.
23. Last but not the least, complainant has also verbally claimed that certain other illegal amounts were also charged from him under the heading of cooking gas connection charges, interest as on date and EEC &FFC charges, etc. 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 alleged by the complainant that the amount was charged whereas there was no such facility being provided in the flat, however no photographs/proofs have been annexed in complaint depicting that such basic facilities have not been provided by respondent. In such situation, Authority directs the respondent to ensure that gas connection and meter connection facilities are provided to complainants, failing which respondent is liable to return the amount to allottee charged under this head.

24. With regard to an oral submission of Id. counsel of the complainant for an amount of Rs. 3,78,082/- charged as "interest accumulated as on date" component in statement of account dated 17.11.2014, 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 statement of account dated 17.11.2014 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, complainants have not clarified as to how this demand qua the interest accumulated as on date was illegal and unreasonable. It is not clear whether the same was illegal because complainants have paid the installments in time as and when demanded or whether the same was illegal as the rate at which it was charged was contrary to the prescribed rate of interest as provided under the Real Estate (Regulation & Development) Act, 2016 and Rules of 2017 made thereunder. It is pertinent to mention here that as per the ‘note’ at the bottom of statement of account dated 17.11.2014, “*content of the statement shall be deemed correct unless informed about any discrepancies within ten days from the date of the letter*”, however, complainants neither communicated to respondent about these discrepancies in the statement of account within said period nor contested these before any forum. Therefore, such component of the demand per se cannot be termed illegal and arbitrary. Nevertheless, Authority observes that if any interest accrued against the allottees for any default on their part, i.e., non-payment of installments on time vide letter dated 17.11.2014, the same could have



been charged only at the rate prescribed under Real Estate (Regulation & Development) Rules, 2017.

25. Authority observes that complainant has not paid the balance dues till date as demanded by respondent in its statement of account dated 17.11.2014 on the ground that the said statement of account was accompanied with illegal demands and unit has deficiencies. 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, statement of account dated 17.11.2014 was issued along with offer letter after issuance of occupation certificate, and successfully communicated on 01.09.2015 which is not disputed by any of the parties, complainant was liable to pay installment raised in said statement of account or to contest the same before an appropriate forum. It is a matter of fact that complainant neither accepted and paid the balance dues nor contested the same before any forum.
26. Thus, on the basis of record on file placed by the parties, Authority is not hesitant to state that respondent has offered the possession of unit on 17.11.2014 and valid communication of the same was made on 01.09.2015 after obtaining occupation certificate from the competent



authority and statement of account dated 17.11.2014 accompanied with offer 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. 20,47,591/- till date remaining the balance dues amounting to Rs. 15,42,098.24/- as per statement of account dated 17.11.2014. 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, however, 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 duly communicated on 01.09.2015, 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.

27. As far as the physical condition of the unit/flat is concerned, Authority observes that complainant on inspecting the unit on 25.09.2015 had communicated various deficiencies in the unit to respondent vide mail dated 27.09.2015; however, such deficiencies allegedly were never rectified by respondent. 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 habitable condition, respondent could have asked for maintenance or holding charges. Since, respondent failed to maintain and upkeep the flat, he is not entitled to charge any holding or maintenance charges from the complainant.
28. Further, Authority observes that complainant had vide email dated 26.08.2015, 27.08.2015 and 28.08.2015, requested the respondent to provide the breakdown details of payment to it, however factual position reveals that the breakup details were never provided due to which complainant could not make the payment. Thus, complainant



shall not be liable to pay any interest after issuance of last statement of accounts dated 17.11.2015.

29. 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 as communicated to her by the respondent vide letter dated 17.11.2014 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-allottee.
30. Further, complainant is seeking compensation of Rs. 30 lakhs on account of delay in possession and for carrying out repairs of the allotted unit and has also annexed an architect report annexed along with application dated 29.03.2023 showing an estimate of about Rs.



2,28,400/- for the balance finishing work to be done in the unit. Since, 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

31. 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.4,19,216/-** as delay possession interest from 27.03.2011 (deemed date of possession) till 01.09.2015 (date of valid offer of possession) i.e., for 53 months and 06 days, calculated @ Rs. 5 per sq. ft. per month for an area measuring 1576 sq. ft. as interest accrued 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 17.11.2014 as per the prescribed rate of interest provided under RERA Act and Rules made thereunder.



However, the interest, if any, till 17.11.2014 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 these outstanding dues, if any, communicated to her by respondent.

- iii. Respondent is directed not to cancel the allotment in favour of complainant and shall hand over the actual physical 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 the parties.
- iv. Respondent is directed to execute conveyance deed of the allotted unit in favour of complainant within 30 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.



32. **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]

