



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	439 of 2021
Date of filing:	12.04.2021
Date of first hearing:	05.08.2021
Date of decision:	22.08.2023

Savitri Devi w/o Sh. Mukat Lal Garg
R/o C-4/22, Safdarjung Development Area,
S.D.A., New Delhi- 110016

....COMPLAINANT

VERSUS

M/s Piyush Buildwell India Ltd.
Office Address: 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: Mr.Nitin Kant Setia, ld. counsel for the complainant.
Mr.Gaurav Singla, ld. counsel for the respondent.

ORDER(NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 12.04.2021 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 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, 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.	M-812, 8 th floor, M- Block
4.	Unit area	1164 sq. ft.



5.	Date of allotment	18.05.2007
6.	Date of builder buyer agreement	07.09.2007
7.	Due date of offer of possession	As per clause 27(a) of BBA- 36 months from date of execution of BBA i.e., 07.09.2010. <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.	Basic sale price	Rs.19,73,380/-
9.	Amount paid by complainant.	Rs.25,72,072 /-
10.	Date of offer of possession	30.06.2017
11.	Occupation Certificate	Received on 13.11.2014 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 complainant had booked a flat in the project namely, "Piyush Heights" located in Sector 89, Faridabad, Haryana of the respondent "M/s Piyush Buildwell India Limited" by paying Rs.2,50,000/- as booking amount for allotment of a flat.
4. That the complainant was allotted a flat bearing no. M-812 on 8th Floor in Tower-M of the project vide the allotment letter dated 18.05.2007. Copy of the allotment letter dated 18.05.2007 is annexed as Annexure C-1.
5. That the builder buyer agreement was executed between the complainant and the respondent on 07.09.2007. As per clause 27(a) of the agreement, possession of unit in question was to be handed over to the allottee within a period of 36 months from the date of execution of the agreement or within an extended period of six months, subject to force majeure conditions, i.e., by 07.09.2010. A copy of builder buyer agreement is annexed as Annexure C-3.
6. That the complainant paid all the instalments as per demand raised by the respondent and had paid Rs. 25,72,072/- till date against the basic



sale price of Rs. 19,73,380/-. Copies of the receipts issued by the respondent to the complainant are annexed as Annexure C-4 (Colly).

7. That the complainant visited the office of the respondent several times to seek update on the development and completion of the project but it was always locked and there was no one to enquire about possession. After that complainant visited the project site and found that no construction was going on and project was delayed from its committed time by the respondent.
8. That the respondent sent a demand letter dated 24.08.2011 for enhancement in EDC to the complainant stating that the Town and Country Planning Department, Haryana has revised the rates of EDC for Urban Estate. After that on 24.07.2012 the complainant received a letter of refund/adjustment of enhanced EDC from the respondent. In response, the complainant sent emails dated 02.09.2012 and 03.10.2012 to the respondent and asked about the revised EDC charges. But the respondent did not reply the same and imposed unnecessary delay charges. Copies of the letters dated 24.08.2011 and 24.07.2012 for adjustment of EDC sent by respondent are annexed as Annexure C-7 (Colly). Copies of emails dated 02.09.2012 and 03.10.2012 sent by complainant are annexed as Annexure C-8 (Colly).



9. That an unsigned letter dated 30.06.2017 was received by the complainant from the respondent on 30.06.2017 whereby possession of flat was offered subject to fulfillment of certain conditions. However, the project was still incomplete at that time, thus it was invalid offer of possession. Copy of offer of possession letter dated 30.06.2017 is annexed as Annexure C-9.
10. That the respondent demanded unnecessary maintenance charges from the complainant without giving possession and without completing the project.
11. That the complainant aggrieved from the actions of the respondent sent various emails/letters to the respondent in the year 2020 seeking seeks information about the possession of the flat, but these were never replied. Copies of the letter/emails dated 19.09.2020, 14.10.2020 & 23.10.2020 sent by complainant are annexed as Annexure C-12(Colly).
12. That the respondent has utterly failed to fulfil its obligations to deliver the possession of the flat in time and adhere to the contentions of the agreement which has caused mental agony, harassment and huge losses to the complainant and now the complainant is entitled to

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possession along with delay penalty from the deemed date of possession. Hence, the present complaint.

C. RELIEF SOUGHT

13. In view of the facts mentioned above, complainant has prayed for the possession along with the delay penalty charges and compensation of Rs. 500,000/-.

D. REPLY FILED BY RESPONDENT:

14. In present case, respondent filed its reply on 20.04.2023 pleading therein as under:-

- 1) That a flat no. M-812, Sector-89, Piyush Heights, Faridabad was allotted to the complainant and the builder buyer agreement was signed on 07.09.2007.
- 2) That the complainant has alleged to have paid the entire amount but he never paid the entire amount of the flat. That it is highly unbelievable that the person who had paid the entire amount remained mum for long time without taking any action and filed complaint in the year 2021 without approaching the respondent for execution of conveyance deed.



- 3) That the complainant had not paid the balance amount, i.e., principal amount, holding charges, maintenance charges, interest and other expenses.
- 4) That respondent-builder has no objection or hesitation to get registry of the said flat done if the complainant agrees to pay the balance amount including the holding charges upto 2021 alongwith interest, maintenance charges upto March 2018 alongwith interest, and other charges such as registry charges/stamp duty etc. which are due upon the buyer/complainant.
- 5) That the complainant without paying the entire amount of the flat is claiming the possession, this shows the mal-practice on part of complainant and therefore complaint should be dismissed on this ground. Further, respondent had requested the complainant to take the possession of the said flat, pay the balance dues and to get the registry done in his favour after paying the government and other charges. However, it is the complainant who did not come forward to take possession.
- 6) Due to default on part of the complainant, respondent had to hold the flat, thus builder is entitled for holding charges.



- 7) That the directors of the company were arrested on 18.06.2018 and were in the custody till the date of filing of this reply. One of the directors namely; Mr. Puneet Goyal had expired during custody period.
- 8) That after arrest of the directors, one RWA was constituted, which illegally handed over the possession of the flat to the buyer 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.
- 9) That when the counsel for the respondent received the copies of the complaints filed by the complainants, upon being verified by the directors, it was found that forged possession letters/receipts were issued by the RWA by procuring false letter heads of the company. The said forged possession letters/receipts were prepared by them despite knowing the fact that the office of the company stands already sealed by the other government



authorities and whole record is with the government authorities. Regarding this allegation another complaint dated 16.08.2021 was filed by the director, Amit Goyal to the Commissioner of Police Faridabad.

- 10) That respondent is always ready and willing to perform its part and in this regard when the directors of the company were in custody, at that time also numbers of registries were done in favour of the buyers who had paid the balance dues and this was done through public utility services.
- 11) In view of above submissions, it has been prayed that present complaint be dismissed.

**E. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT**

15. During oral arguments learned counsel for the 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 was made by the respondent vide an unsigned letter dated 30.06.2017. However, said offer was without completing the unit in question and is in totally inhabitable condition with blocked entry which is also clearly stated by the local



commissioner in its report dated 19.06.2023 along with photographs. Thus, it was not a valid and legal offer. He further stated that complainant has paid an amount of Rs. 25,72,072/- to the respondent which is more than the entire consideration amount. In accordance with the Act, the complainant is entitled to delay penalty from the deemed date of possession till date along with possession after completing the unit in question.

In response, learned counsel for respondent, Mr. Gaurav Singla, stated that offer of possession was made in the year 2017 after receiving the occupation certificate from DTCP, Haryana on 13.11.2014. 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. However, complainant did not come forward to take the possession despite issuance of offer letter dated 30.06.2017. 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. However, respondent is always ready and willing to perform its part.



F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

16. Authority had gone through the 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 2007 and was allotted flat bearing no. M-812, Tower-M on 8th floor in the real estate project “Piyush Heights” at Faridabad, Haryana, being developed by the respondent promoter namely; M/s Piyush Buildwell India Ltd., at a basic sale price of Rs.19,73,380/-. The builder buyer agreement was entered into between the complainant and the respondent on 07.09.2007. 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 30.06.2017, annexed at C-9.
17. The grouse of the complainant is that though the offer of possession was made vide letter dated 30.06.2017 but same was made without completing the construction work of the unit in question. Even till date, the unit is not complete and is totally inhabitable. Since, on the



date of offer of possession the unit in question was incomplete and inhabitable, therefore, complainant did not accept the offer of possession. However, complainant tried to communicate with respondent to take possession nevertheless office of respondent found always locked. Subsequently respondent issued a statement of account dated 30.03.2018 demanding balance due amount of Rs.0.03 only, showing that accounts between parties are already settled. Now, complainant-allottee is before the Authority praying that respondent be directed to hand over possession of the unit to complainant in habitable condition along with interest at prescribed rate for delay in handing over of possession.

18. 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.
19. 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.

20. 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 unit to complainant? (ii) Whether the offer of possession made vide letter dated 30.06.2017 was a valid offer of possession 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, annexed at C-3, 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-C-3, page-27 of the complaint, it is observed that the agreement was entered into between the complainant and the respondent on 07.09.2007. Meaning thereby, respondent was obligated to complete the unit/flat and hand over



possession of the same by 07.09.2010 or in case of any force majeure situation by 07.03.2011. It is observed that respondent has not placed any document to show or prove existence of any force majeure condition during the intervening period, i.e., between 07.09.2007 to 07.09.2010. Thus, respondent is not entitled to the benefit of grace period of six months.

21. Communication/ service of offer of possession vide letter dated 30.06.2017 i.e. after lapse of more than six years from the stipulated time for handing over of possession is not disputed. What is disputed by complainant is only that offer of possession dated 30.06.2017 was made without completion certificate. 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.



Issue no. (ii): Whether the offer of possession made vide letter dated 30.06.2017 was a valid offer of possession or not?

It is the case of the complainant that it did not accept the offer of possession of unit made vide letter dated 30.06.2017 as the same was unsigned; without completion of construction work in the flat and inhabitable. As far as the physical condition of the unit/flat is concerned, it is pertinent to mention that no photographs taken/obtained by complainant at the time when offer of possession was made, i.e., on 30.06.2017, have been attached in complaint book which can help the Authority to ascertain that condition of flat of the complainant was inhabitable at the time of offer of possession. Further, perusal of offer of possession letter dated 30.06.2017 reveals that vide the said offer letter, respondent had informed the complainant that it had received an occupation certificate bearing no. ZP-261/SD(DK)/2014/26201 dated 13.11.2014 for Tower no's. B,E,M & N and are offering possession of the said flat by virtue of building buyer agreement executed by the complainant. Since the offer was made after obtaining occupation certificate, therefore, it cannot be stated that unit was not habitable at that very point of time



in absence of any other proof on record on the contrary. Therefore, the offer made vide letter dated 30.06.2017 is considered to be valid.

However, in order to ascertain the condition of flat during the pendency of case, Authority vide its order dated 27.04.2023 appointed Mr. Arvind Mehtani, CTP of the Authority as the local commissioner to verify the deficiencies of the flat of the complainant. Mr. Mehtani visited the flat and submitted his report along with photographs on 19.06.2023 wherein it is stated that the unit/flat of the complainant is not in habitable condition and entry is totally blocked. Thus, on the basis of inhabitable condition of flat as depicted in the local commissioner report, Authority is not hesitant to state that complainant has right to claim compensation and the complainant is at liberty to approach the Adjudication officer of this Authority to grant the relief of compensation for carrying out necessary repairs in the allotted unit.

22. Admittedly, as per statement of account dated 30.03.2018, annexed at page no. 63 of complaint book, complainant had paid total amount of Rs. 25,72,072/-. Therefore, interest has been calculated on the said amount paid by complainants at prescribed rate of interest under Rule 15 of HRERA Rules, 2017 on the date of this order, 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%.

23. 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., 07.09.2010 till date of offer of possession, i.e., 30.06.2017 which comes out to be **Rs.15,06,790/-**.
24. With regard to issue of holding charges claimed by respondent, Authority observes that undoubtedly the respondent was holding the unit for the complainant and should have maintained the same. Only in a present situation if the unit/flat was in a habitable condition, respondent could have asked for maintenance or holding charges. Since, respondent failed to maintain and upkeep the flat, he is not entitled to charge any holding or maintenance charges from the complainant.
25. Complainant has also stated that respondent sent her a demand letter dated 24.08.2011 for enhancement in EDC on account of revision of EDC rates by Town and Country Planning Department, Haryana and claim the refund of said amount obtained by respondent. In this regard, Authority observes that respondent has already adjusted



enhanced EDC obtained from complainant in payments pending towards complainant which is also stated by respondent in its letter dated 24.07.2012 issued to the complainant. Thus, now there remains nothing to be adjudicated by this Authority with regard to amount of enhanced EDC obtained by respondent.

H. DIRECTIONS OF THE AUTHORITY

26. 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. Respondent is directed to pay an amount of **Rs. 15,06,790/-** 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. 07.09.2010 till 30.06.2017, i.e. upto the date of valid offer of possession after receiving an occupation certificate.
- ii. The arrears of delay possession interest accrued so far shall be paid to the complainant within 90 days from the date of uploading of this order.



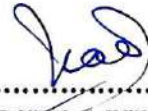
iii. Respondent is directed to hand over actual physical possession of the unit to the complainant within 30 days of issuance of this order.

These directions are without prejudice to the right of the complainant to claim compensation for mental agony or harassment faced by the complainant in the unit/flat under the provisions of The Real Estate (Regulation & Development) Act, 2016.

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



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]