


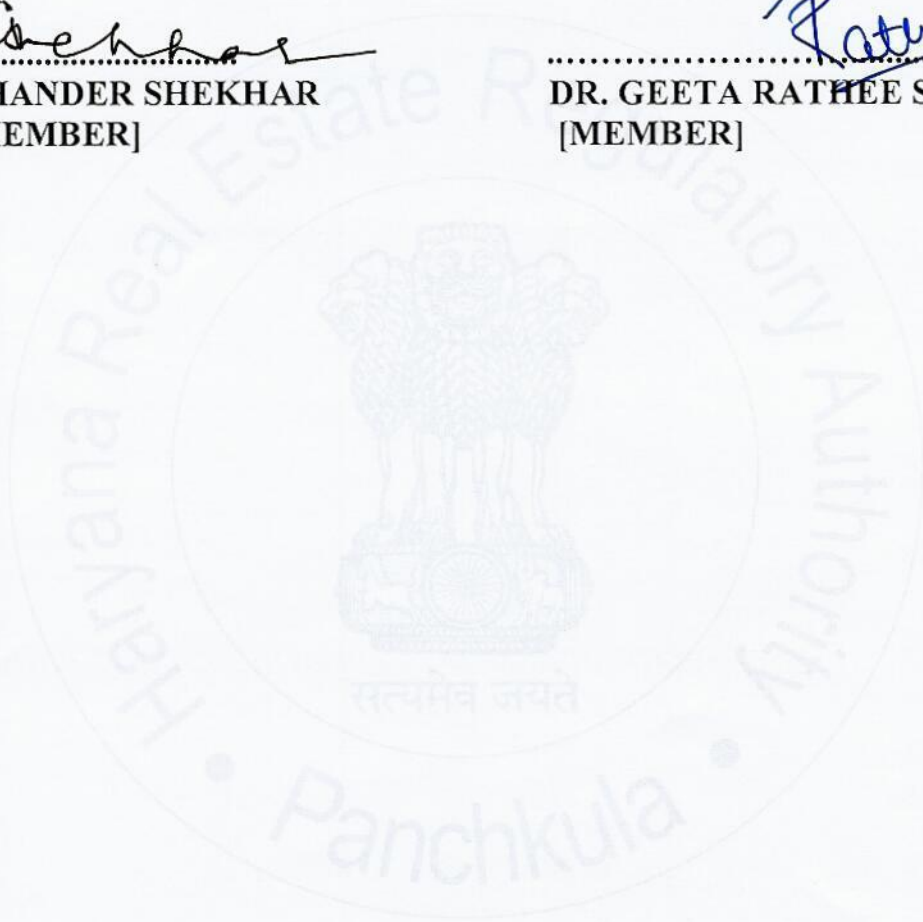


2. Remaining arguments of learned counsel for the complainant heard. Vide separate detailed order of today complaint is allowed.

File be consigned to record room.

  
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**CHANDER SHEKHAR**  
[MEMBER]

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





## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3356 of 2022
Date of filing:	30.12.2022
Date of first hearing:	13.04.2023
Date of decision:	11.03.2025

Sh. Ashish Dhawan, S/o Sh. Gulshan Dhawan,  
R/o 82/2, Emilia 3, Vatika City, Sohna road,  
near Vatika Business Park, Sector-49,  
Gurugram, Haryana 122018.

...COMPLAINANT

VERSUS

M/s Piyush Buildwell India Ltd.  
R/o Piyush Mahendera Mall, Uppar Basement,  
Opp. Dussehra ground,  
NIT Faridabad, Haryana-121006

....RESPONDENT

**CORAM:** Dr. Geeta Rathee Singh  
Chander Shekhar

Member  
Member

**Present:** Adv. Roop Singh, Ld. Counsel for complainant, through VC.  
None for respondent.

*Geeta Rathee*



**ORDER**

1. Present complaint was filed by the complainant on 30.12.2022 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 unit booked by complainant, details of sale consideration, amount paid by the complainant and details of project as provided in the complaint are detailed in following table

सत्यमेव जयते

Sr. No.	Particulars	Details
1.	Name of the Project	Piyush Heights, Sector 89, Faridabad, Haryana
2.	RERA registered/ not registered	Unregistered
3.	Unit No.	J-913, 9 <sup>th</sup> floor, Tower J
4.	Unit area	1164 sq.ft.
5.	Date of allotment	01.09.2011

*Rathore*

6.	Date of flat buyer agreement	29.11.2011
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 29.11.2014. 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.	Basic sale price	Rs.24,98,177/-
9.	Amount paid by complainant	Rs.32,35,008/-
10.	Offer of possession	07.08.2022

**B. FACTS OF THE COMPLAINT AS STATED IN COMPLAINT FILED BY THE COMPLAINANT:**

3. Facts of the complaint are that on 16.08.2011, complainant booked an apartment in the Group Housing Project "Piyush heights" situated in Sector-89, Faridabad, Haryana being developed by the





respondent. On 01.09.2011, a flat bearing no J-913, 9<sup>th</sup> Floor, Tower-J having an area of approximately 1164 sq. ft. was allotted to complainant in the said project of respondent. Thereafter, on 29.11.2011, builder buyer agreement was entered into between the parties.

4. Complainant submits that between 16.08.2011 and 02.12.2011, he made all the payments as per payment plans provided in buyer's agreement without making any default. Upto 02.12.2011, payment of Rs.30,81,734/- was made against the basic sale price of Rs.24,98,177/-. However, in-spite making payment more than the basic sale consideration, respondent did not offer possession to the complainant including other allottees of J and K Towers of the said project till the end of November 2018. Complainant submits that by this time respondent had finished only upto 85% of the construction work. And thereafter he abandoned the said two towers of the said project, thereby leaving the allottees of the said towers in lurch.
5. It is submitted by complainant that the allottees of J and K towers of the said project on noticing that respondent has completely abandoned the project and no construction activity was going, formed an association namely "Piyush Heights Residents Tower J and K Welfare Association" (Tower J and K Association). The

  
Rathee

allottees of J and K towers through its association then approached this Hon'ble Authority with a prayer to take over the said two towers (J and K) of the project and complete the remaining work left out by the respondent promoter. The said complaint was allotted the number RERA-PKL-89-2019.

6. This Hon'ble Authority vide order dated 06.08.2019 passed in complaint No. RERA-PKL-89-2019 while invoking Section 8 of the Real Estate (Regulation and Development) Act, 2016 allowed the Tower J and K Association to take over towers J and K of the project "Piyush Heights" for completion and handing over possession to the allottees of the project. Further, this Hon'ble Authority was monitoring the progress of the project being appraised by the Tower J and K Association from time to time till the date when the Complaint No. 89 of 2019 was finally disposed of on 20.10.2022.
7. Vide order dated 28.10.2021 passed in complaint no. 89 of 2019, it is submitted that this Hon'ble Authority allowed the Tower J and K Association to handover possession of apartments to individual allottees of J and K towers of the said Project. Thereafter, complainant approach this Hon'ble Authority through an application for intervention and direction, seeking necessary direction to the Tower J and K Association to hand over possession

  
R. K. Jaiswal



of the complainant's apartment. The Authority vide its order dated 31.05.2022 directed the Tower J and K Association to hand over possession of the complainant's apartment on '*as and where is basis*'.

8. Complainant submits that on 07.08.2022, he was handed over possession of his apartment by the Tower J and K Association in compliance of the order of this Hon'ble Authority dated 31.05.2022. It is submitted by complainant that when he obtained the possession of the apartment, no internal work was carried out by the respondent promoter as the respondent did not finish the internal work when it actually abandoned the towers J and K in the year 2018. Thus, complainant had no choice but to take over possession of the apartment on '*as and where is basis*'. As a result, complainant submits that he has suffered a huge loss on account of the internal work not completed by the respondent even after taking more payment than the total sale consideration of the apartment.

9. It is submitted that as per clause 27(a) of the builder buyer agreement (BBA), respondent promoter had an obligation to handover possession of the complainant's apartment within a period of 36 months from the date of signing of the BBA, i.e. by 29.11.2014. Assuming that there was delay and taking into account

  
R. Ramesh



the grace period of 6 months, the possession of the apartment became due on 29.05.2015.

10. Further as per Section 18 of the RERA Act, 2016, if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, the allottee shall be paid interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
11. It is submitted that there was a complete failure on the part of the respondent in handing over the possession of the apartment on time. Therefore, the respondent is liable for payment of interest on account of delay in handing over possession of the apartment from the deemed date of possession (29.11.2014) to the date of handing over possession of the apartment (07.08.2022).
12. Further, Rule 15 of the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 provides that the rate of interest payable by the promoter to the allottee shall be the State Bank of India highest marginal cost of lending rate plus two per cent (MCLR + 2%).
13. Thus, in view of the above submissions, the complainant submits that he is entitled to payment of delay interest from the deemed



date of possession (29.11.2014) till the date of handing over possession of the apartment (07.08.2022).

14. Furthermore it is submitted that even after multiple directions of this Hon'ble Authority regarding execution of conveyance deed in complaint no. 89 of 2019, the respondent promoter has failed to execute the conveyance deed in favour of the complainant. As per Section 17 of the RERA Act, the promoter has an obligation to execute a registered conveyance deed in favour of the allottee within a period of three months from the date of issue of occupancy certificate. Therefore, the respondent promoter is liable to execute a conveyance deed in favour of the complainant without further delay particularly when the complainant has already made more payment to the respondent promoter than the total sale consideration, even though the respondent promoter did not complete the work as it was obligated to do as per the terms and conditions of the BBA and the payment received.
15. Hence, the present complaint.

**C. RELIEFS SOUGHT**

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

  
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- i. Direct respondent to pay interest on account of delay in delivery of the possession to the complainant from 29.11.2014 to 07.08.2022 as per Section 18 of the RERA Act, and at the rate as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019;
- ii. Direct the respondent to execute a registered conveyance deed in favour of the complainant without further delay; and
- iii. Direct the respondent not to demand any other charges from complainant under any head whatsoever including payment of interest;
- iv. Any other relief which this Hon'ble Authority may deem fit in the facts and circumstances of case be allowed.

**D. REPLY:**

17. In present case, initially notice was issued to respondent company on 03.01.2023, however same was returned undelivered. On hearing dated 13.04.2023, Ld. Counsel for complainant had requested that notice may be sent on another address out of the two addresses given in the complaint. Authority had therefore directed the service of notice on another address for which notice was issued on 25.07.2023. However, same could not be served as observed in order dated 26.07.2023 and Authority directed





complainant to serve dasti upon respondent. Dasti notice was collected on 24.08.2023, and as per service report filed by complainant notice was served on 02.09.2023 on respondent. Adv. Gaurav Singla appeared on behalf of respondent and requested for an opportunity to file its written submissions. Thereafter on hearing dated 09.04.2024, Adv. Mayank Agarwal appeared on behalf of respondent and submitted that from today onwards he shall be representing the respondent. However, on next 2 hearing dated 30.07.2024 and 22.10.2024, he didn't appear.

18. Therefore, it is observed that despite service of dasti notice to the respondent on 02.09.2023 and been granted several opportunities, respondent has not filed its reply. On the last date of hearing i.e. on 22.10.2024 none appeared on behalf of respondent and Authority had struck off the right of defense of respondent. Today also none has appeared on behalf of respondent.
19. It is pertinent to note that the proceedings before the Authority are summary in nature. Sufficient opportunity has been offered to the respondent to file a reply and also to argue the matter. Since reply has not been filed and none is appearing to argue on behalf of the



respondent, the Authority decides to proceed ex-parte against the respondent.

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

20. During oral arguments learned counsel for complainant has reiterated arguments as mentioned in their written submissions. Further on hearing dated 22.10.2024, it was submitted by Ld. Counsel for complainant that respondent/ promoter are liable to pay delay possession charges and also register the conveyance deed without seeking more charges as respondent/ promoter is demanding ₹ 3,00,000/- more for registration of conveyance deed from complainant.

**F. ISSUES FOR ADJUDICATION:**

21. Whether complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

**G. OBSERVATIONS OF THE AUTHORITY:**

22. The Authority has gone through the documents and heard oral submissions of the complainant. In light of the background of the matter as captured in this order, Authority observes that it is a matter of record that the complainant booked a flat in the year 2011





and was allotted flat bearing no.J-913, Tower-J on 9<sup>th</sup> 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 complainant and respondent on 29.11.2011 as per which, possession of the 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. Complainant was handed over keys of flat on "*as and where is basis*" of his apartment by Tower J and K association on 07.08.2022.

23. Complainant has alleged that when he obtained possession of the apartment, no internal work had been carried out by respondent promoter, infact respondent had abandoned the towers J and K in the year 2018. Therefore he had no choice but to take over possession of the apartment on "*as and where is basis*".
24. On perusal of the buyer's agreement dated 29.11.2011, it is observed that as per clause-27(a), 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 meaning thereby, respondent was obligated to complete the





unit/flat and hand over possession of the same by 29.11.2014 or in case of any force majeure situation by 29.02.2015. It is observed that no document has been placed on record by respondent or to prove existence of any force majeure condition during the intervening period, i.e., between 29.11.2011 and 29.11.2014. 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 29.11.2014. 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.

25. Further on perusal of order dated 31.05.2022 passed in complaint no. RERA-PKL-89-2019, it is observed that Hon'ble Authority had directed the Tower J and K Association to handover possession of complainant's apartment on "as and where is basis". Relevant part of the order is reproduced herein below:

*"5. So far as issue of prayer of 8 non associated members is concerned, Authority has considered the same and is of the opinion that after paying nearly full sale consideration to respondent company, these allottees have acquired a vested right in the property in question. Such right cannot be denied*



*to the allottees by the association. Mr. MC Jain had argued that they should not be allowed to take possession as they were earlier requested by the association to join, but they chose to remain silent and did not respond for a long time, and have not even paid due amounts for completion of the construction of Towers.*

*Authority cannot accept the argument put forward by Mr. MC Jain. It directs the association to hand over possession of allotted apartments to 8 allottees expeditiously. However, association is entitled to recover outstanding dues from these allottees. The dues should be recovered on pro rata basis as has been paid by other members of the association. The association may levy penalty @10% of overdue amount on non-associated members for not responding for such a long time and for non-cooperation at the time of completion of construction of 6. Case is adjourned with a direction to association to handover possession to 8 non-member allottees on as and where basis subject to the payment of outstanding dues.”*

In view of such direction, possession of complainant's apartment was handed over by the Resident Tower J& K Welfare Association vide letter dated 07.08.2022 by way of delivery of keys of the apartment to complainant.

26. Since, possession was accepted by complainant on 07.08.2022; therefore, complainant is entitled to delayed interest in terms of Section 18 of the RERA Act, 2016. By virtue of Section 18 of the RERA Act, 2016, complainant is entitled to the relief of interest





from the deemed date of possession, i.e., 29.11.2014 till the date on which possession was handed over to complainant by Tower J and K association i.e., till 07.08.2022.

27. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.-For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

**“Rule 15:** “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal cost of lending rate +2%:





*Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”*

As per website of the State Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date, i.e., 11.03.2025 is 11.10 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

28. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 11.10 % (9.10% + 2.00%) from the due date of possession, i.e., 29.11.2014 till the date of delivery of possession i.e. 07.08.2022.
29. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 29.11.2014 till the date of delivery of possession, i.e. 07.08.2022, which works out to ₹27,61,994/- as per detail given in the table below.



Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 07.08.2022 (in ₹)
1.	4,48,000/-	29.11.2014	3,82,701/-
2.	1,50,000/-	29.11.2014	1,28,137/-
3.	23,83,734/-	29.11.2014	20,36,290/-
4.	1,00,000/-	29.11.2014	85,424/-
5.	1,53,274/-	06.07.2022	1,29,442/-
<b>Total</b>	<b>32,35,008/-</b>		<b>27,61,994/-</b>

30. Further, 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 favor 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 paid the entire consideration and received the possession of his apartment. Thus, the respondent-promoter is obligated/duty bound under Section 17 of the RERA Act, 2016 to execute a registered conveyance deed in favour of the complainant-allottee.

31. However, today during course of hearing learned counsel for complainant brought it to the notice of the Authority that the Department of Town and Country Planning has suspended the license of the respondent for the time being and has also stayed the

*Signature*



execution of any convened deed. In view of this new development Authority observes that the complainant was never a party to whatever has transpired between the DTCP and the respondent. The question that now arises is whether an allottee be made to suffer for an act or omission on part of the respondent vis-à-vis the department, the answer is in negative. An allottee cannot be made to suffer due to the default and part of the respondent promoter, therefore respondent is directed to get the conveyance executed within 30 days from the date the legal embargo in getting conveyance deed is removed/revoked by the Department of Town and Country Planning. It is further directed that in case of any enhancement in the statutory changes/fees for getting convinced executed, same shall not be burdened upon the allottee and shall be borne by the respondent promoter only.

#### **H. DIRECTIONS OF THE AUTHORITY**

32. 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 **₹ 27,61,994/-** as delay possession interest from 29.11.2014 (deemed date of possession) till 07.08.2022 (date of delivery






of possession) as interest accrued within 90 days from the date of uploading of this order. Interest shall be paid as per Section 2(za) of RERA Act, 2016.

ii. Respondent is directed to get the conveyance deed executed in favor of complainant by authorizing an official of the company to execute conveyance deed in favour of complainant within 30 days of the legal embargo with respect to getting conveyance deed been lifted by the Department of Town and Country Planning.

iii. 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.

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

  
.....  
**CHANDER SHEKHAR**  
[MEMBER]

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