



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	806 of 2021
Date of filing.:	10.08.2021
First date of hearing.:	05.10.2021
Date of decision.:	27.05.2025

1. Harish Sharma  
2. Geetanjali Sharma  
Both R/o A-2/303, Satyam Apartments  
Vasundhara Enclave, Delhi-110096

....COMPLAINANTS

VERSUS

Piyush Buildwell India Ltd.  
1st Floor, Plot NO.-5, YMCA Chowk,  
NH-2, Main Mathura Road, Faridabad

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**

**Member**

**Chander Shekhar**

**Member**

**Present: -**

Ms. Kirti Schrawat, Learned Counsel for the Complainants  
through VC

Mr. Gaurav Singla, Learned Counsel for the Respondent  
Through VC

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed by complainant 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 allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the project, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Piyush Heights, Sector 89, Faridabad, Haryana
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Unregistered
4.	Details of the unit.	O-912, 9th Floor, measuring 1164 sq. ft..
5.	Date of Allotment	27.10.2009





6.	Date of floor buyer agreement	None
7.	Due date of possession	27.10.2012
8.	Basic sale consideration	₹19,02,000/-
9.	Amount paid by complainant	₹19,75,021/-
10.	Offer of possession.	18.03.2014

### **B. FACTS OF THE COMPLAINT AS MENTIONED IN THE COMPLAINT**

3. Facts of the complaint are that complainants in the year 2007 had booked a residential unit in the real estate project namely "Piyush Heights" situated at Sector 89, Faridabad being developed by respondent promoter on 04.10.2007. Complainants were allotted unit bearing no. O-912, 9th Floor, measuring 1164 sq. ft. vide allotment letter dated 27.10.2009. The basic sale price of the unit was fixed at ₹ 19,02,000/- against which the complainants have paid an amount of ₹ 19,75,021/- till date.
4. It is submitted that the complainants regularly paid instalments, interest, EDC, IDC in respect of the booked unit in a timely manner. Copies of the payment receipts have been attached with the complaint file.
5. A letter of offer of possession was issued by the respondent on 18.03.2014 in respect of the booked unit stating that the respondent is ready to offer





possession of the unit subject to payment of remaining dues. As per the statement of account issued along with said offer of possession, respondent had raised a further demand of ₹ 10,60,815/-. The respondent then issued a reminder letter dated 11.06.2014 demanding that the complainants are liable to pay overdue payments. It is submitted that the complainants have already made payment of the entire amount to the respondent as per the original payment plan. The complainants had raised objections to the said unreasonable demands of the respondent however, the respondent rather issued a final demand notice dated 06.07.2015.

6. It is further submitted that even after a lapse of more than 15 years from booking, the unit in question is not complete. Copies of latest photographs of the unit have been annexed with the complaint file as proof of submission. The respondent had issued a letter of offer of possession without completing basic work and finishings.
7. The complainants have been constantly demanding registration of the unit in their name however, the respondent has failed to get the unit registered. Complainants are also aggrieved by the fact that the present RWA of the project, Piyush Heights Condominium, has charged from the complainants maintenance charges even though the complainants have never received possession. The RWA has threatened the complainants that they will not be allowed to take possession without payment of the said maintenance charges.





8. There is still no progress from the side of the respondent. The respondent has failed to give valid possession to the complainants despite a lapse of more than 15 years from booking. Hence, the present complaint seeking possession of the booked unit along with delay interest for the delay caused in delivery of possession.

### **C. RELIEF SOUGHT**

9. In view of the facts mentioned above, the complainants pray for the following reliefs):-
- i. Pass an order directing the respondents to hand over possession of the said flat to 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 compensate the complainant 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 complainant;





- iv. Pass an order directing the respondent that pursuant to handing over of possession, the registration of the flat (conveyance deed) be done in the name of the complainant;
- v. Pass an order directing the RWA of the Piyush Heights condominium to not collect illegal and arbitrary maintenance charges from the complainant; 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 above mentioned circumstances.

10. During arguments, learned counsel for the complainants submitted that complainants in present complaint are seeking relief of possession on "as and where basis" along-with delayed interest and further execution of conveyance deed in respect of the allotted unit. She submitted that there is no builder buyer agreement executed between the complainants and the respondent. She further submitted that allotment letter and various demand letters issued by respondent forms the basis for seeking relief in present complaint. She stated that proper receipts have been filed in the Authority on 19.12.2024 and clarified that the amount of Rs.5,00,000/- was paid on 05.02.2010 as the date is not clear in the receipt.

11. Learned counsel for the complainants further submitted that the respondent had unilaterally increased the area of the unit without providing any justification for the same. As can be seen, in the allotment letter

*[Signature]*



annexed at page 20 of the complaint book the area of the unit is mentioned as 1164 sq. ft. whereas as per the statement of account annexed at page no.29 of the complaint book, area of the same unit is increased to 1268 sq. ft. Further, Id. counsel for complainant submitted that though a builder buyer agreement has never been executed by respondent with complainants, however payments were made by them as and when demanded by respondent. Further she referred to offer of possession dated 18.03.2014, and submitted that same was not accompanied by statement of account, and that the respondent had raised an illegal demand of Rs.10,60,815.51/- without providing any component wise detail of said charges.

12. Furthermore, Id. counsel for complainants submitted that certain facilities have still not been provided however amounts with respect to the same have already been charged by respondent. As per statement of account annexed at page no.29 of the complaint book, respondent has raised illegal demands under the head of preferential location, cooking gas connection, meter connection charges, additional development charges, and other additional charges amounting to approximately Rs.7 lakhs. However no such facility has been provided by the respondent. Therefore, Id. counsel for the complainant submitted that the offer of possession dated 18.03.2014 was not a valid offer since illegal demands had been made from the complainants. She further referred to pictures of the flat at page no. 34 of





the complaint which were clicked in 2021 i.e. when complaint was filed, which show that flat is incomplete and such facilities have not been provided by respondent company.

13. Learned counsel for the complainants concluded that the complainants wish to continue with the project and therefore pray for possession of unit along with delay interest.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

14. Learned counsel for the respondent filed detailed reply on 20.04.2023 pleading therein:

15. Through the present complaint, complainants are seeking direction to the respondents to hand over the flat No. 0-912, Sector-89, Piyush Heights. It is submitted that the complainants were allotted the unit in question vide allotment letter dated 27.10.2009.

16. That an offer of possession was issued to the complainants on 18.03.2014 in respect of the booked unit and the complainants were requested to pay the balance amount. The complainants failed to accept the said offer of possession and make payment of outstanding demands. Thereafter, a reminder letter was issued on 11.06.2014 regarding the payment of outstanding dues along with detailed statement of accounts but the complainants again failed to pay heed to the same. After this the final demand notice was sent on 06.07.2015 for making payment of entire dues





and take possession. It is submitted that despite issuing offer of possession/reminder letters the complainants have deliberately failed to come forward and accept possession of the booked unit for reasons best known to them.

17. The complainants never approached the respondents to get the unit registered. Respondent had to hold the unit for the sake of the complainants and accordingly, the builder is entitled for holding charges.
18. Due to several legal disputes against the respondents/directors of the respondent company from many of the allottees, the directors were arrested on 18.06.2018 and put in custody for a long time. Unfortunately during the custody period one of the directors namely Mr. Puneet Goyal and his father were expired.
19. After the arrest of the directors, the allottees constituted a Registered Welfare Association and started illegally handing over the possession of the unit to the allottees despite knowing that the payments were still due towards each allottee. They also procured false letter head of the company and on these letter heads they issued forged possession letter and no dues certificates to such allottees. When the directors of the company came to know about this, they requested the RWA through their representatives to cease such illegal activities. However, the RWA ignored the request of the directors of the company due to which a complaint dated 23.10.2020 was





given to the Commissioner of police, Faridabad for taking action against the RWA. The copy of the same is annexed herewith as Annexure R-1.

20. It is further submitted that the directors were in custody 2018 and when counsel for the answering respondent received the copies of the complaints filed by various allottees it was found that some of the letter heads procured by the RWA and the allottees were used to forge possession letter/receipt upon the same. Regarding this allegations one complaint dated 16.08.2021 was given by Director Amit Goyal to the Commissioner of Police Faridabad. The copy of the same is annexed herewith as Annexure R-2.

21. Respondent had duly issued an offer of possession to the complainants on 18.03.2014. However, the complainants never come forward and when they come to know that the directors of the company are behind the bars only then they filed this present complaint only to avoid the payment. After releasing from the Police custody another reminder letter dated 11.09.2022 was also issued to the complainants for making payment of requisite amount and take possession. The copy of the letter is attached as ANNEXURE R-3.

22. That the respondent builder has no objection or hesitation for registry of the said unit if the complainant agrees to pay the balance amount including the holding charges alongwith and the maintenance charges up-to March 2018 alongwith interest and other charges which are due upon the





complainants. It is further submitted here that the builder has no objection if the complainants will pay the registry charges/stamp duty directly in the office of Registrar.

23. That in the present complaint the respondents are always willing to get the registry done in favour of the complainants, if the complainants are ready to pay the outstanding balance amount.

24. During the course of hearing, learned counsel for respondent submitted that as there exists no builder buyer agreement, therefore no terms and conditions can be determined. He submitted that as per letter of offer of possession annexed at page no.27 of the complaint book, possession was offered on 18.03.2014 along with occupation certificate duly issued on 26.02.2014 and with a demand of amount of Rs.10,23,196.50/- which was to be paid within 30 days of the date of that letter. Further reminder letter was sent to the complainants on 11.06.2014 and 06.07.2015 which were ignored by the complainants. Id. counsel for respondent submitted that if the demands were illegal as has been pointed out by counsel for complainants, then the same must have been challenged, however no demand was ever challenged by complainants. He stated that the RERA Act,2016 came into force in entirety in 2017; however the present complaint was filed in 2021, after a lapse of 4 years of the Act of 2016 coming into force which shows the malafide motive of the complainants. With regard to the increase in area, Id. counsel for respondent submitted





that no area was ever agreed to between the parties as no builder buyer agreement has ever been signed. Further, delay is only on the part of complainants as letter offering possession was issued on 18.03.2014, and if any amount as demanded by such letter was illegal the same was never challenged by complainants. Fact of the matter is that the complainants deliberately failed to accept the offer of possession issued on 18.04.2014 and have now approached the Authority with a false claim just to cover up their lacunae. Hence, the complainants are not entitled to any relief.

#### **F. OBSERVATIONS AND DIRECTIONS OF THE AUTHORITY**

25. As per facts set out in preceding paragraph, complainants had booked a unit in the project of the respondent namely 'Piyush Heights' Sector 89, Faridabad on in the year 2007. A unit bearing no. O-912, 9th floor tentatively measuring 1164 sq. ft was allotted to the complainants vide allotment letter dated 27.10.2009. It is submitted that builder buyer agreement was never executed between the parties in respect of the booked unit. Complainants have paid a total amount of ₹ 19,75,021/- till date to the respondent against basic sale consideration of ₹ 19,02,000/-. An offer of possession was issued to the complainants on 18.03.2014 along with a demand of outstanding payment of ₹ 10,23,196.51/-. Allegedly said offer of possession was unacceptable to the complainants due to unreasonable demands of ₹ 10,23,196.51/- to be paid by the complainants despite having





already paid the entire sale consideration amount. Thus the complainants did not take possession of the booked unit. Thereafter, the respondent issued a reminder notice date 11.06.2014 and a final demand notice cum cancellation letter dated 06.07.2015 for making payment of the entire balance amount within 15 days and taking possession of the unit. The complainants failed to make payment of the balance amount and take possession of the unit.

26. Admittedly, a builder buyer agreement in respect of the booked unit was not executed between the parties. In the absence of a builder buyer agreement, it cannot be rightly ascertained as to when the possession should have been delivered to the complainant. In these circumstances, reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. In captioned complaint, complainants had been allotted a unit in the project in question vide allotment letter dated 27.10.2009. Therefore, a period of three years from the said date works out to 27.10.2012, meaning thereby that the respondent should have delivered possession of the unit to the complainant by 27.10.2012.





Now, the admitted fact of the matter is that the respondent had issued an offer of possession to the complainants vide letter dated 18.03.2014. In said letter of possession it has categorically been mentioned that the respondent has received occupation certificate dated 26.02.2014 for the Tower No.s D,O and P and are offering possession to initiate the process of handing over of the unit. Along with said offer of possession, respondents have raised a demand of ₹ 10,23,196.51/- as outstanding demand against the cost of the unit. This offer of possession is resisted by the complainants on grounds of huge unreasonable demand of ₹ 10,23,196.51/- and that the construction of the unit was incomplete. It has been submitted that the complainants had raised objections to the unreasonable demand of an amount of ₹ 10,23,196.51/- as outstanding balance sale consideration after having already paid an amount of ₹ 19,75,021/- which is more than the basic sale consideration. However, on perusal of record, it is observed that the complainants have failed to attach any documentary proof in the complaint file in which it is showcased that they had raised any objection against the said offer of possession dated 18.03.2014 and/ or demand of ₹ 10,23,196.51/- with the respondent. Complainants have not denied the receipt of said offer of possession and there is no communication placed on record to prove that the complainants had contended the said offer/demands in the year 2014 with the respondents. In the present complaint, complainants have merely stated that the offer of possession





was accompanied with unreasonable demands, however, the complainants have nowhere mentioned the grounds on which the said demand of ₹ 10,23,196.51/- was challenged. Since, there is no builder buyer agreement between the parties, the terms with regard to the sale consideration are unavailable and thus it cannot be rightly observed as to which of the demands were in contrast to the terms agreed between the parties. Mere verbal submissions of the complainants cannot be entertained. The complainants have failed to substantiate their claim in regard to the fact they had raised any objections in respect of the offer of possession dated 18.03.2014 with the respondent at that time.

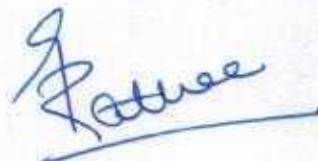
27. Another contention raised by the complainants is that the unit in question was not complete at the time of offer of possession. In support they have attached the latest photographs of the unit. A bare perusal of these photographs shows that the unit allotted to the complainants is in a rough condition. Now the truth being that the construction of the unit in question has been completed by the respondent since 2014, there is no photograph placed on record which shows the status of the unit as on 18.03.2014. Complainants have failed to place on record any photographic proof/ report of an independent agency from whence the possession had been offered to them to prove that the unit was uninhabitable at that time. Authority in order to verify the current status of the unit had appointed a





local commissioner to conduct an examination. As per the report of the local commissioner dated 19.06.2023 the possession of the unit can be handed over after refurbishing the unit. Since, the unit in question has long been constructed, it is only natural for it to undergo the process of wear and tear especially since it is not being utilised. Nonetheless it does not mean that the unit in question was not in habitable condition at the time when the respondents had issued the offer of possession dated 18.03.2014. Hence the contention of the complainant with regard to incomplete construction cannot be accepted.

27. As observed in the preceding paragraph, respondent should have delivered possession of the unit to the complainants by 27.10.2012. It is admitted by both parties that an offer of possession was issued on 18.03.2014. Said offer of possession was issued duly after receipt of occupation certificate dated 26.02.2014 for the tower in which the unit of the complainants is situated. The complainants had resisted the said offer of possession on the ground of unreasonable demand and uninhabitability of the unit, however as can be discerned there was no impediment in their accepting the said offer of possession. In the event that the respondent had failed to address their grievances, if any, complainants should have availed proper legal remedy as per law of land at the time to protect their interests. However, again there is no document on record which shows that the complainants





had availed any legal remedy at the time to challenge the alleged offer of possession/ demand of ₹ ₹ 10,23,196.51/-.

28. The offer of possession dated 18.03.2014 was a valid offer of possession duly issued after receipt of occupation certificate dated 26.02.2014 and after completion of construction. This fact that offer of possession dated 18.03.2014 was issued after obtaining occupation certificate on 26.02.2014 is not disputed by any of the parties, complainants were liable to pay instalments raised along with the offer of possession or contest the same before an appropriate forum. The complainants did not accept the said offer of possession for reasons best known to them and also did not agitate the same in case they had any grievance. At the time when the offer of possession was issued, complainants had already paid an amount of ₹ 19,75,021/- to the respondents in lieu of booked unit which is more than the basic sale consideration of ₹ 19,02,000/-. Complainants should have accepted the said offer of possession and taken possession of their booked unit but the complainants failed to do so. Complainants have only agitated their claim now in the year 2021 after a gap of nearly 7 years. It is also a fact that RERA had come into force in 2017, thus, the further delay of 2017 to 2021 after coming into force of RERA Act also raises a genuine doubt against the conduct of the complainants. Upon receiving the offer of possession/reminder letters, the complainants were obligated to take over





the possession within the time period as mentioned after executing necessary documents and making payment of all dues.

29. Now with regard to the issue pertaining to admissible delay interest, it is observed that possession of the unit should have been offered to the complainants by 27.10.2012. A valid offer of possession was issued to the complainants on 18.03.2014. For this period the complainants are entitled to be compensated for the delay caused in delivery of possession. Since a valid offer of possession had already been issued to the complainant before coming into force of RERA Act 2016, the original terms of the contract as agreed between the parties would prevail. However, there is no builder buyer agreement executed between the parties to govern the terms and conditions of the contract. In the absence of a proper clause to determine as to what was agreed, the quantum or rate of interest/compensation/or whether agreed to pay for delay in handing over possession of the unit cannot be rightly determined.

30. With regard to the maintenance charges and holding charges as reflected in the statement of account, it is observed that undoubtedly the respondent was holding the unit for the complainant and should have maintained the same. Only in a situation if the unit/flat was in a proper condition, respondent could have asked for maintenance or holding charges. As per the report of the local commissioner, the unit in question is in need of refurbishment. Since, respondent failed to maintain and upkeep the flat,





hence is not entitled to charge any holding or maintenance charges from the complainants.

31. In the relief clause, vide relief no. v, the complainants have sought directions against RWA of the Piyush Heights condominium to not collect illegal and arbitrary maintenance charges from the complainants. In this regard it is observed that the complainants have not made the RWA, Piyush Heights Condominium a party to the present complaint. Further during the entire course of hearing, the complainants have not pressed for/agitated any relief qua relief no. v. Therefore, no decision is being passed regarding relief no. v. In case of any grievances, complainants are at liberty to file a fresh claim.

32. The complainants are seeking compensation to the tune of ₹ 15,00,000/- on account of 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. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the





factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

33. In light of the aforementioned facts and circumstances, Authority observes that the complainants have filed present complaint seeking possession of the unit bearing no. O-912, 9th Floor, Tower O, Piyush Heights. Vide letter dated 18.03.2014, respondent had offered possession of the unit in question to the complainants. Said offer of possession is found to be a valid offer of possession duly supported with occupation certificate. As per record, the unit still stands in the name of the complainants and there is no hindrance in their accepting the same. Respondent has raised no objection in handing over possession of the booked unit. Now the only issue remaining is the payable and receivables between the parties in respect of the booked unit. The complainants had failed to accept a valid offer of possession for reasons best known to them. However, the fact that the complainants have deposited a sum of ₹ 19,75,001/- with the respondent in lieu of the booked unit also cannot be overlooked. Since, 2017, the project of the respondent has been embroiled in legal embargo thus raising genuine concerns in the minds of complainants/allottees with regard to their hard earned money and the future of the project. It can only be inferred that it was after lifting of the veil of uncertainty over the project, the complainants approached the





appropriate Court of law, this being the RERA Authority to avail legal remedy and claim possession of the booked unit. It cannot be denied that the complainants had failed to fulfill their duties with regard to the payment of outstanding amounts and accepting the possession of the unit. However, parallelly, in case the complainants had defaulted in making payments, respondent should have cancelled the allotment and returned the amount after forfeiture of earnest money. Nonetheless, as per record the account of the complainants in respect of the rights over unit bearing no. O-912 is still running, an amount of ₹ 19,75,001/- has already been deposited with the respondent. Since the year 2012, the complainants are devoid of their hard earned money and have also failed to enjoy possession of their booked unit. Accordingly, to balance the equities in the matter and in the interest of justice, the rights and liabilities of both parties are being freezed as in the year 2014. The complainant will not be entitled to get any delay interest for the delay caused in delivery of possession from 27.10.2012 till 18.03.2014 and the respondents cannot claim holding charges or maintenance charges or interest on balance due amount. For this reason, no maintenance charges will be applicable, maintenance charges and holding charges shall be applicable after actual handing over of possession of plot to the complainants. The complainants have already accrued rights in their favour for the unit in question and may accordingly pursue them as per orders passed by the Authority.






34. With regard to the issue of execution of conveyance deed, Authority is of the considered view that there is no impediment on execution of conveyance deed in favour of an allottee when allottee pays the full consideration and gets the possession. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. In the present case, complainants have not paid the entire consideration and not yet received the possession of the unit. Thus, complainants are liable to pay the balance dues and thereafter complainants are entitled to claim 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 complainants.

35. With the observations and directions as recorded above, case is **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]