



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	340 of 2024
Date of filing:	04.03.2024
First date of hearing:	09.07.2024
Date of decision:	20.03.2025

Gopi Nath Agarwalla S/o Late Sh.G.R. Agarwalla,
R/o Sneh Garden, A4G, 28, Rai, Bahadur Road,
Kolkata- 700053

....COMPLAINANT

VERSUS

1. Piyush Heights Resident Towers J&K Welfare Association
R/o at 134, Sector-17, Faridabad
Haryana-121002

2. M/s Piyush Buildwell India Ltd.
Piyush Global 1, 1st Floor, Plot No. 5,
YMCA Chowk, Main Mathura Road, NH-2,
Faridabad

....RESPONDENT(S)

CORAM:	Parneet S Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Mr. Albar Qureshi, Counsel for the complainant through VC
Ms. Aishwarya Dobhal, Counsel for the respondent no.1 through VC.
Mr. Mayank Aggarwal, Counsel for the respondent no.2, in person.

ORDER (PARNEET S SACHDEV- CHAIRMAN)

1. Present complaint has been filed by the 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, the details of sale consideration, the 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, Village Riwaspur and Kheri Kalan, Sector-89, Faridabad, Haryana-121002.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	J-1215, 12 TH FLOOR, J- Block admeasuring 1164 sq. ft.
6.	Date of allotment	22.08.2008



7.	Date of builder buyer agreement	24.01.2011
8.	Deemed date of possession	24.01.2014
9.	Possession clause in BBA (Clause 6.1)	<p>Clause 27(a):-</p> <p><i>"That the Company shall complete the 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 Buyers) 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 Buyers)."</i></p>
10.	Basic sale consideration	<p>₹1790 sq. ft × 1164 sq. ft =</p> <p>₹20,83,560/-</p>
11.	Amount paid by the complainant	₹ 25,80,121.23/- (As per receipts attached in complaint file)

12.	Date of offer of Possession	Possession not given till date
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B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present case are such that the complainant booked a flat/apartment in respondent's real estate project "Piyush Heights" located at Sector 89, Faridabad. The complainant paid booking an amount of ₹2,90,000/- as premium on 23.02.2007. Copy of the receipt dated 23.02.2007 is attached as **ANNEXURE A.**
4. That the complainant was allotted flat no. 1215, 12th floor in J- Block vide allotment letter dated 22.08.2008, measuring 1164 sq ft. Copy of the said allotment letter dated 22.08.2008 is attached as **ANNEXURE-B.**
5. Despite repeated payments from the complainant in the form of due instalments, Respondent No. 2 failed to execute the Builder Buyer Agreement. It was only after significant delay that Respondent No. 2 finally executed the BBA for the said flat on 21.01.2011. Copy of the said BBA dated 21.01.2011 is attached as **ANNEXURE-C.**
6. That the complainant duly made all payments as and when demanded by Respondent No. 2. However, it was later revealed that the construction of the J&K Towers had been pending for several years. Despite repeated efforts by the complainant to have the property registered in his name,



these attempts proved futile. Copy of the said receipts are attached as **ANNEXURE-D.**

7. In 2018, the complainant became aware that the offices of Respondent No. 2 had been sealed and its directors were in judicial custody due to fraudulent activities committed against customers. In light of these developments, the Association of Allottees hereinafter, referred as Respondent No. 1 filed a complaint titled "*Piyush Heights Residents Tower J&K Welfare Association v. Piyush Buildwell India Ltd*" (Complaint No. 89 of 2019) under Section 8 of the RERA Act, 2016, before this Hon'ble Authority, seeking appropriate relief. Vide its order dated 13.03.2019, the Authority directed Respondent No. 1 to complete the remaining construction of the J&K Towers. Copy of the said order dated 13.03.2019 is attached as **ANNEXURE-E.**
8. Further, vide order dated 28.10.2021, the Authority ordered respondent no.1 to hand over the possession of the flats/ apartments to the members of association after verifying the documents since respondent no.1 had completed the construction. Copy of the said order dated 28.10.2021 is attached as **ANNEXURE-F.**
9. Respondent No. 1 conducted the handing over of possession on 26.11.2021 and 12.12.2021, during which flats were handed over to the members of the Respondent No. 1 Association. However, the complainant, residing in Kolkata, was not aware of these proceedings.



10. Vide order dated 05.08.2022, this Authority directed the respondent no.1 to handover possession to the non-associated members subject to payment of dues amount. Copy of the said order dated 05.08.2022 is annexed as **ANNEXURE-H**. Further, this Hon'ble Authority, in its order dated 20.10.2022, observed that possession of the flats had been handed over to the allottees by Respondent No. 1, and the remaining liability was the execution of the conveyance deed, which was to be undertaken by Respondent No. 2. Respondent No. 2 was directed to execute the conveyance deed within 45 days, and accordingly, the complaint was disposed of. Copy of the said order dated 20.10.2022 is annexed as **ANNEXURE-I**.
11. On 06.11.2023, upon being made aware of the final order, the complainant reached out to the President of Respondent No. 1, submitting a representation along with the relevant documents, requesting inclusion as a member of the association in order to take possession of the property. Further, on 26.11.2023, the complainant received a recovery letter from Respondent No. 1, demanding payment of dues amounting to ₹1,53,274/-, including a penalty of ₹ 13,934/-. A copy of the said recovery letter dated 26.11.2023 is annexed herewith as **ANNEXURE-K**.
12. The complainant has duly paid all remaining dues; however, despite completing the required process, he has not been included as a member of



the association, resulting in his inability to take possession or obtain registration of the said unit.

13. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed by the complainant.

C. RELIEFS SOUGHT

14. That the complainant seeks following relief and directions to the respondent:-

- i. Pass an order directing the respondent no. 1 to handover the possession of the said flat in the hands of the complainant being the lawful owner of the same;
- ii. Pass an order directing the respondent no. 2 to execute conveyance deed in favor of the complainant, without delay and without any additional costs and charges payable to the respondents.
- iii. Pass an order directing the respondents to not impose and further withdraw any demands, whatsoever, for additional deposit in lieu of maintenance, additional charges and/or interest, and the property should be allocated to the complainant at the original cost as agreed upon in the agreement; and/or

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- iv. Pass any other/further order or relief which this Hon'ble Court may deem fit and proper in the interest of justice in the light of the abovementioned circumstances.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

15. As per the records of the Authority, notice dated 06.03.2024 was dispatched to Respondent No. 2. However, the said notice was returned undelivered. Notwithstanding the same, on the first date of hearing, Advocate Mayank Agarwal appeared on behalf of Respondent No. 2, and Advocate Aishwarya Dobhal appeared on behalf of Respondent No. 1 and accepted notice on their respective behalf.

The matter was first listed for hearing on 09.07.2024, wherein the complainant was directed to supply a copy of the complaint to both respondents. On the subsequent date of hearing, learned counsel appearing for Respondent No. 2 submitted that she does not intend to seek any further time to file reply, as she is appearing on behalf of the Resident Welfare Association (RWA) solely to assist the Authority with respect to the two towers stated to have been completed by the RWA.

Despite having been granted two opportunities thereafter to file reply, Respondent No. 2 failed to comply with the directions of the Authority and did not file any reply even by the time of the third hearing. The matter was then listed for a fourth hearing on 20.03.2025, yet no reply was filed by

Respondent No. 2 on the said date as well. In view of the repeated and unexplained non-compliance by Respondent No. 2, despite having availed sufficient and adequate opportunities and keeping in view the summary nature of proceedings under the Act, the Authority finds no justification to afford any further indulgence. Accordingly, the defence of Respondent No. 2 is hereby struck off and the matter shall proceed ex-parte against the said respondent.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. Ld. Counsel for the complainant reiterated the facts of the case and submitted that in compliance with the previous directions issued by this Authority, the fresh Builder Buyer Agreement (BBA) has been placed on record vide application dated 19.12.2024. He further prayed that Respondent No. 1 be directed to hand over the possession of the subject unit to the complainant. Subsequently, Ld. Counsel appearing on behalf of Respondent No. 2 submitted that the only relief sought against Respondent No. 2 is the execution of the conveyance deed in favour of the complainant. He further apprised the Authority that two appeals are pending before the Hon'ble Appellate Tribunal- one preferred by the builder (Appeal no. 858/2022) and the other by the State of Haryana (Appeal no. 533/2022), challenging the findings of this Authority pertaining to delay.



17. On the other hand, Ld. Counsel for Respondent No.1 submitted that in the earlier Complaint No. 89 of 2019, it was recorded that two towers were constructed by the Resident Welfare Association (RWA) and possession thereof was handed over by the RWA. She further submitted that as on date, the complainant has duly cleared all outstanding dues in terms of the observations made in Complaint No. 89 of 2019 and hence Respondent No.1 has no objection to the handing over of possession. As regards the aforementioned pending appeals, she argued that the same have no bearing on the present complaint. In particular, she submitted that Appeal No. 858 of 2022 titled State of Haryana vs. PHRWA does not operate as a stay on the execution of the conveyance deed. The subject matter of the said appeal pertains only to the issue of auction of scrap material, which was one of the reliefs sought by the RWA in Complaint No. 89 of 2019.

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

- F.1 Issue regarding whether the respondent no. 1 be directed to handover the possession of the said flat to the complainant being the lawful owner of the same;**
18. From the perusal of the case record and the oral submissions made by the respective counsels, it is observed that the complainant was allotted Flat No. 1215 on the 12th Floor of J-Block in the real estate project "Piyush Heights," Sector 89, Faridabad, and the Builder Buyer Agreement (BBA) in respect of the said unit was executed between the complainant and



Respondent No. 2 on 24.01.2011. The complainant has annexed relevant payment receipts and placed on record sufficient documentation to demonstrate that he has duly paid all dues as demanded by the promoter from time to time.

19. It is further observed that pursuant to the earlier complaint bearing No. 89 of 2019 titled Piyush Heights Residents Tower J&K Welfare Association vs. Piyush Buildwell India Ltd., this Authority vide order dated 13.03.2019 had directed the Association of Allottees (Respondent No.1 herein) to complete the construction of the incomplete towers J & K. Subsequently, upon the construction being completed, the Authority, vide its orders dated 28.10.2021 and 05.08.2022, directed the Resident Welfare Association (RWA) to hand over the possession to the members of the Association and also to non-associated members, subject to clearance of their respective dues.
20. In compliance thereof, the complainant approached Respondent No. 1 and deposited the amount as per the recovery letter dated 26.11.2023, including penalty charges. The payment receipts have also been placed on record. Ld. Counsel for Respondent No. 1 submitted during the hearing that the complainant has now cleared all outstanding dues in accordance with the orders passed in Complaint No. 89 of 2019 and Respondent No. 1 has no objection to handing over possession to the complainant. It was also clarified by the counsel for Respondent No. 1 that the pending appeals,



particularly Appeal No. 858 of 2022, do not operate as a stay and is unrelated to the reliefs sought by the present complainant.

21. In view of the above, this Authority is of the considered opinion that the complainant, being a valid allottee and having complied with his obligations under the BBA and the directions issued by this Authority in previous proceedings, is entitled to be included as a member of the Resident Welfare Association and to be handed over possession of the subject flat. Respondent No. 1, having admitted to the clearance of dues and having expressed no objection, is accordingly directed to hand over the physical possession of flat no. 1215, 12th Floor, J-Block, to the complainant within 90 days from the date of uploading of this order, in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016.

F.II Issue regarding whether the respondent no. 2 be directed to execute conveyance deed in favour of the complainant, without delay and without any additional costs and charges payable to the respondents.

22. Authority has carefully examined the record of the present complaint, including the Builder Buyer Agreement (BBA) dated 24.01.2011, the payment receipts placed on record, and the oral submissions made by the counsels for the parties. It is evident from the documents on file that the



complainant has complied with all his obligations under the BBA and has duly cleared all outstanding dues as demanded by the Association. These facts have also been duly acknowledged by the Resident Welfare Association (Respondent No. 1) during the course of the proceedings and has raised no objection to the handing over of possession.

23. Furthermore, the issue concerning the execution of the conveyance deed was addressed in the earlier Complaint No. 89 of 2019, wherein this Authority, vide its order dated 20.10.2022, had observed that while possession of the flats had been handed over by Respondent No. 1, the execution of the conveyance deed remained the responsibility of Respondent No. 2. Accordingly, Authority had directed Respondent No. 2 to execute the same within a period of 45 days. However, it is noted that despite the lapse of substantial time since the said directions, Respondent No. 2 has failed to execute the conveyance deed in favour of the present complainant.

24. While the learned counsel appearing for Respondent No. 2 has brought to the notice of this Authority that two appeals, Appeal No. 858 of 2022 filed by the builder and Appeal No. 533 of 2022 filed by the State of Haryana are pending adjudication before the Hon'ble Appellate Tribunal, it is also noted that there is no stay operating against the execution of the conveyance deed in favour of the complainant. In particular, it has been clarified that Appeal No. 858 of 2022 pertains primarily to the issue of



auction of scrap material and does not concern the rights of individual allottees seeking conveyance of their respective units.

25. In light of the above facts and considering that the complainant has already discharged all obligations under the BBA, including full payment of dues and submission of relevant documentation, Authority finds no legal impediment to the execution of the conveyance deed. However, since the appellate proceedings are currently pending before the Hon'ble Tribunal, and final adjudication in the said appeals may have a bearing on the broader aspects of the project and associated liabilities, it would be appropriate to direct Respondent No. 2 to proceed with the execution of the conveyance deed subject to the outcome of the said appeals.
26. Accordingly, Respondent No. 2 is hereby directed to execute the conveyance deed in favour of the complainant in respect of flat no. 1215, 12th Floor, J-Block, in the project "Piyush Heights," Sector 89, Faridabad, without any delay and without demanding any additional costs, charges, or consideration, except those expressly provided for in the executed BBA, and in accordance with applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and rules framed thereunder. This direction shall, however, remain subject to the final outcome of Appeal No. 533 of 2022 and Appeal No. 858 of 2022 pending before the Hon'ble Appellate Tribunal.

G. DIRECTIONS OF THE AUTHORITY

27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act 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 No. 1, having admitted to the clearance of dues and having expressed no objection, is accordingly directed to hand over the physical possession of Flat No. 1215, 12th Floor, J-Block, to the complainant within 90 days from the date of uploading of this order, in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016.
- ii. Respondent No. 2 is hereby directed to execute the conveyance deed in favour of the complainant in respect of Unit No. 1215, 12th Floor, J-Block, in the project "Piyush Heights," Sector 89, Faridabad, without any delay and without demanding any additional costs, charges, or consideration, except those expressly provided for in the executed BBA, and in accordance with applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and rules framed thereunder. This direction shall, however, remain subject to the final outcome of Appeal No.



533 of 2022 and Appeal No. 858 of 2022 pending before

the Hon'ble Appellate Tribunal.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S SACHDEV
[CHAIRMAN]