



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	632 of 2023
Date of filing.:	29.03.2023
First date of hearing.:	19.07.2023
Date of decision.:	01.07.2025

Rashmi Attri
R/o K-214, Piyush Heights, Sector 89
Faridabad, Haryana- 121002

....COMPLAINANT

VERSUS

M/s Piyush Buildwell India Ltd.
A-16/B-1, Mohan Cooperative Industrial Estate
Main Mathura Road
New Delhi 110044

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Chander Shekhar

Member

Present: -

Mr. Roop Singh, Learned Counsel for the Complainants
through VC

None for the Respondent

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.	K-214, 2nd Floor, K-Block measuring 1164 sq. ft
5.	Date of Allotment	14.12.2006



6.	Date of endorsement in favour of complainant	07.08.2014
7.	Date of builder buyer agreement (with original allottees)	25.08.2014
8.	Possession Clause in BBA	Clause 27(a)- 36 months from date of execution of BBA. Relevant clause is as under <i>"27(a) That the Company shall completedevelopment/construct ion 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>
9.	Due date of possession	25.08.2017
10.	Basic sale consideration	₹19,67,160/-
11.	Amount paid by complainant	₹ 26,32,724/-
12.	Offer of possession.	None



B. FACTS OF THE COMPLAINT AS MENTIONED IN THE COMPLAINT

3. Facts of the complaint are that a residential unit had been booked by original allottees namely Mr. Saurabh Saxena and Mrs Vinita Saxena in the project namely "Piyush Heights" situated at Sector 89, Faridabad being developed by respondent promoter on 14.12.2006. The original allottees were allotted a residential unit bearing no. K-214, 2nd Floor, K-Block measuring 1164 sq. ft. in the said project.
4. A builder buyer agreement was executed between the original allottees and the respondent on 25.08.2007. As per the agreement, possession of the unit was to be delivered within a period of 36 months from the date of signing of the agreement or within an extended period of six months. The period of 36 months from the date of execution of the builder buyer agreement along with extended period of 6 months expired on 25.02.2011. A copy of the said builder buyer agreement has not been placed on record.
5. Subsequently, the unit in question was purchased by Mr. E. Subamohan and Mrs. P. M. Rajalaksmi from the original allottees on 12.09.2012. Ultimately Ms Rashmi Attri, the complainant in present complaint, purchased the said unit from the erstwhile allottees on 24.07.2014. The respondent endorsed the booking of the unit in question in the name of the

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present complainant on 07.08.2014. Further, respondent issued an allotment letter dated 07.08.2014 in respect of the unit in question i.e unit bearing no. K-214, 2nd Floor, K-Block measuring 1164 sq. ft in favour of the complainant.

6. Thereafter on 25.08.2014, a fresh builder buyer agreement was entered into between the complainant and the respondent. As per clause 27(e) of this fresh agreement, the respondent promoter had an obligation to deliver the possession of the unit was to be delivered within a period of 36 months from the date of signing of the agreement. Said period expired on 25.08.2017. The respondent was further allowed an extended period of six months in case of any force majeure conditions. A copy of the builder buyer agreement is annexed as Annexure P-3.
7. Between 14.12.2006 to 07.08.2014, payments were made to the respondent as per the payment plans provided by the respondent, without making any default. Upto 07.08.2014, an amount of ₹ 26,32,724/- was paid to the respondent against the basic sales price of Rs. 19,67,160/- .
8. It has been submitted that despite making payment for an amount more than the basic sale consideration of the unit, the respondent failed to offer possession to the complainant within the time period as stipulated in the builder buyer agreement. That by the month of November 2018, the respondent had completed only upto 85% of the construction work of the Tower J and K of project in question and thereafter, the respondent had



completely abandoned the two towers of the said project, thereby, leaving the allottees of these two towers in lurch.

9. That when the allottees of J and K towers of the project noticed that the respondent had completely abandoned the project and that there was no construction activity at the site of the project, the allottees formed an association namely "Piyush Heights Residents Tower J and K Welfare Association" (Tower J and K Association). Thereafter, the allottees of J and K towers through its association approached the Haryana Real Estate Regulatory Authority by way of Complaint bearing no. RERA-PKL-89-2019 with a prayer to take over the two towers (J and K) of the project and complete the remaining construction work at their own level.
10. The 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. The Authority monitored the progress of construction of the project undertaken by the Association of Tower J and K from time to time through the proceedings of the Complaint No. 89 of 2019.
11. When the construction of the said two towers got completed, the Authority then vide its order dated 28.10.2021 had allowed the Association of Tower



J and K to handover possession of apartments to individual allottees of those towers of the Project. It has further been submitted that some of the allottees of J and K Towers of the Project, who were not members of Tower J and K Association, had approached the Authority through applications seeking necessary directions to the Tower J and K Association to hand over possession of their apartments. Thereafter, the Authority vide its order dated 31.05.2022 had directed the Tower J and K Association to hand over possession to those allottees on '*as is and where is basis*'.

12.The complainant had also approached the Authority seeking similar direction to the Association. The Authority in line with its earlier order, had directed the Tower J and K Association to hand over possession of the complainant's apartment on '*as is and where is basis*' to the complainant vide order dated 05.08.2022. In compliance of the directions passed by the Authority vide order dated 05.08.2022 in Complaint No. 89 of 2019, the complainant was handed over possession of her unit on 02.10.2022.

13.It is submitted that when the complainant took over possession of the unit, no internal work was carried out by the respondent promoter. The complainant had no choice but to take over possession of the unit on '*as and where is basis*'. The complainant has suffered a huge loss on account of the internal works not being completed by the respondent even after taking more payment than the total sale consideration of the unit.



14. As per Clause 27(a) of the builder buyer agreement, the respondent had an obligation to handover possession of the complainant's unit within a period of 36 months along with an extended period of 6 months. The possession of the unit in question had become due on 25.02.2011.
15. As per Section 18 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act), 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.
16. 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 unit from the deemed date of possession i.e 25.02.2011 till the date of handing over possession of the unit 02.10.2022.
17. 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%).



18. In view of the above submissions, the complainant is entitled for payment of delay interest from the deemed date of possession (25.02.2011) till the date of handing over possession of the apartment (02.10.2022).
19. Further, even after multiple directions being passed by the 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 builder buyer agreement and the payment received.
20. Hence, the present complaint.

C. RELIEF SOUGHT

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



- i. Direct the respondent to pay interest on account of delay in delivery of the possession to the complainant 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.

22. During the hearing, learned counsel for the complainant submitted that in the captioned complaint, complainant is seeking delay interest from the respondent as the respondent failed to complete the construction of the project and handover possession. Complainant had received possession on 02.10.2022 in compliance of the directions passed by the Authority vide order dated 05.08.2022 in Complaint no. 89 of 2019. Further, in said complaint Authority had observed that promoter will continue to be liable for any dues that are recoverable from the promoter and any formalities that have to be gone through and that the association of allottees is not liable to discharge any legal obligation of the promoter towards the State Government agencies. Learned counsel further submitted that the license is still with the respondent/ promoter and entire sale consideration stands paid



to the respondent. Furthermore, respondent/ promoter is liable to pay delay possession charges and also register the conveyance deed without seeking any more charges from the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

23. In the present case, initially notice was issued to the respondent company on 07.04.2023, however the same was returned undelivered. On hearing dated 19.07.2023, learned counsel for the complainant had requested that notice may be sent on additional address of the respondent mentioned at index of the complaint file. Accordingly, the Authority had issued direction for service of notice on the additional address of the respondent for which notice was issued on 27.07.2023. However, the same could not be served as the receiver was not available. Thus, vide order dated 07.11.2023 complainant was directed to serve dasti notice upon respondent. Dasti notice dated 14.11.2023 was collected on the same date, and the same was served upon the respondent on 18.11.2023. On hearing dated 09.04.2024 Adv. Mayank Agarwal appeared on behalf of respondent and requested for some time to file reply.

24. However, on the next two hearings dated 30.07.2024 and 22.10.2024 respondent did not file its reply. On the last date of hearing i.e. on 22.10.2024 none appeared on behalf of respondent and Authority had



granted last opportunity to respondent to file reply within 3 weeks failing which the right of defense of respondent shall be struck off.

25. Thereafter, the matter was listed for hearing on 18.03.2025. On said date reply had not been filed and no one was present on behalf of the respondent. It was observed that respondent had been given multiple opportunities to file reply and also to argue the matter, however, the respondent had deliberately failed to do so. Therefore, the right of defence of the respondent was struck off. Today also none has appeared on behalf of the respondent.

26. 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. ISSUES FOR ADJUDICATION:

27. Whether complainant is entitled to relief of delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016.



F. OBSERVATIONS AND DIRECTIONS OF THE AUTHORITY

28. As per facts and circumstances, complainants herein are subsequent allottees who had purchased booking rights qua unit bearing no. K-214, 2nd Floor, K-Block measuring 1164 sq. ft. in the project being developed by the respondent namely 'Piyush Heights' situated at Sector 89, Faridabad. The respondent had endorsed and transferred booking rights in favor of the complainant on 07.08.2014. Earlier a builder buyer agreement had been executed between the original allottees and the respondent on 25.08.2007. However, after the complainant purchased the unit, the respondent and the complainant entered into a fresh builder buyer agreement in respect of the unit in question on 25.08.2014. As per clause 27(a) of the agreement, the possession of the unit was to be delivered within a period of 36 months along with an extended period of 6 months. Thus possession of the unit was to be delivered by 25.02.2018. After the respondent abandoned the construction of the Tower J and K of the project, the construction of the project was handed over to "Piyush Heights Residents Tower J and K Welfare Association" for completion of the remaining construction works at their own level. After completing the construction of the Towers J and K, the possession of the unit in question was handed over to the complainant on 02.10.2022 on 'as is and where is basis'. It has



been alleged by the complainant that when she took possession of the unit, internal works had not been carried out by the respondent promoter. Complainant had no choice but to accept the possession on '*as is and where is basis*'. Complainant has approached the Authority seeking delay interest for the delay caused in delivery of possession of the booked unit.

29. Admittedly delivery of possession has been delayed beyond stipulated period of time. As per clause 27(a) of the builder buyer agreement, respondent undertook to complete the construction of the unit possession within 36 months from the date of signing of agreement along with an extended period of six months, subject to force majeure conditions meaning thereby, respondent was obligated to complete the unit/ and hand over possession of the same by 25.08.2017 or in case of any force majeure situation by 25.02.2018. It is relevant to mention that throughout the period from 25.08.2017 till 25.02.2018 no communication had been sent by the respondent to the complainant highlighting any force majeure condition due to which the construction of the project had got delayed. Thus, the respondent cannot be granted benefit of the 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 builder buyer agreement, i.e., by 25.08.2017. However, the respondent had failed to complete the construction of the unit and issue an offer of possession to the complainant.



30. Further on perusal of order dated 05.08.2022 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:

*"8. So far as issue of prayer of non-associated members is concerned, Authority has considered the same and is of the opinion that after paying nearly full sale consideration to the respondent company, these allottees have acquired a vested/legal right in the property in question. Such right cannot be denied to the allottees by the association. Mr. MC Jain submitted that these allottees are required to pay ₹1,53,274/- (*1,39,340/- plus ₹13,934/- penalty), the amount which has been paid by the other non-member allottees on pro rata basis. Penalty has been imposed for not responding on time to become the member of the association at the time of completion of construction of Towers as per order dated 31.05.2022 passed by the Authority. Authority is of the view that the association is to hand over possession of allotted apartments to all non-4 Y associated allottees on behalf of which applications have been filed on the same principles which have been advised in case of members of association. Association is entitled to recover outstanding dues from these allottees and the dues should be recovered on pro rata basis as has been paid by other members of the association."*

In view of the direction of the Authority, the Resident Tower J& K Welfare Association handed over the possession of the unit in question to the complainant on 02.10.2022. Complainant had accepted the possession on "as is where basis"

31. As per observations recorded in the preceding paragraphs, delivery of possession of the booked unit has been delayed by the respondent beyond the time period stipulated in the builder buyer agreement. For the delay

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caused in delivery of possession, complainant is entitled to receive delay interest for the period of delay by virtue of Section 18 of the RERA Act, 2016. So, the Authority hereby concludes that the complainant is entitled to receive delay interest from the deemed date of possession i.e 25.08.2017 till the date on which possession was handed over to the complainant by Tower J and K association i.e till 02.10.2022. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(z) "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"

32. Hence, Authority directs respondent to pay delay interest to the complainant 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 from the due date of possession till the date of a valid offer of possession.
33. In the captioned complaint, complainant has paid a total amount of ₹ 26,32,724/- to the respondent in lieu of the booked unit. Out of the total paid amount, payment of ₹ 58,200/-(paid as transfer charges at the time of nomination of unit in favour of subsequent allottees Mr. E. Subamohan and Mrs. P. M. Rajalaksmi), ₹ 1,26,200/- (paid as transfer charges at the time of nomination of unit in favour of the complainant) and amount of ₹ 3,258/- (interest paid on delayed payment by subsequent allottees Mr. E. Subamohan and Mrs. P. M. Rajalaksmi) has been deducted from the total paid amount at the time of calculation of interest since these amounts have



not been paid towards sale consideration of the unit. Thus the total amount taken for calculation of delay interest admissible to the complainant is ₹ 24,44,466/-.

34. Authority has got calculated the interest on paid amount of from ₹ 24,44,466/- due date of possession till the date of delivery of possession in the captioned complaint as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession	Interest Accrued till date of handover of possession i.e 02.10.2022 (in ₹)
1.	24,44,466/-	25.08.2017	13,86,414/-
Total:	24,44,466/-		13,86,414/-

35. 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 her unit, 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.


[Signature]
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F. DIRECTIONS OF THE AUTHORITY

36.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 ₹13,86,414/- as delay interest from 25.08.2017 (deemed date of possession) till 02.10.2022 (date of hand over 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. The respondents shall not charge anything from the complainants which is not part of the agreement to sell.
- iii. Respondent is further directed to get the conveyance deed executed in favour of complainant within 30 days from uploading of this order.

37.**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]