

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY  
AUTHORITY, PUNJAB**

Date of Decision: 17.03.2020

Complaint No. 1184 of 2019

Date of Institution: 20.04.2019

1. Nitin Jindal, D2 065, DLF New Town, Westend Heights Begur, Bangalore, Karnataka – 560068
2. Suresh Jindal, House No.734, Sector 1, HUDA, Shahabad Markanda, Kurukshetra, Haryana 136135

....Complainants


Versus

1. M/s Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area-1, Chandigarh – 160002
2. Shri Bharat Mittal, B-107, First Floor, Business Complex at Elante Mall, Industrial Area-1, Chandigarh – 160002
3. Shri Binder Pal Mittal, B-107, First Floor, Business Complex at Elante Mall, Industrial Area-1, Chandigarh – 160002

.... Respondents

Present : None for the complainants  
Shri Bhupinder Singh, representative on behalf of the respondents

**ORDER**

 This complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to

as the Act) has been filed by Shri Nitin Jindal and Shri Suresh Jindal alleging various irregularities on part of respondent.

2. Various allegations have been made in the complaint, the main one of which is that possession of the unit allotted in favour of the complainants was to be handed over by 20.03.2015 but had still not been delivered. It has also been alleged that the Occupancy Certificate had been obtained wrongfully; that the specifications promised at the time of allotment had not been complied with; that covered car parking had not been provided as promised; and that the respondents had made unapproved changes in the layout plans of the project. Even though various such matters have been raised in the complaint the only relief claimed is the payment of interest for the delay in handing over possession, and hence this issue will be focus of this order.

3. In the reply submitted on behalf of the respondents it has been pointed out that unit was allotted to the complainants on 05.11.2011 and the Buyer's Agreement was executed on 21.03.2012. Under this agreement possession was to be delivered within 42 months (36 months with a grace period of 6 months). Further, under this agreement there was a provision for payment of compensation of Rs.5.00 per sq. feet per month for any delay in handing over possession and the due amount has been paid till June 2018. The complainants had accepted this payment without any demur, and hence were estopped from claiming interest for the period of delay. It is further pointed out that possession of the unit had been delivered to the



complainants on 26.02.2019 and hence the contention in the complaint about non delivery of possession was totally unfounded.

4. Arguments were heard on 11.02.2020. On behalf of the complainants Shri Varun Chawla, Advocate reiterated the allegations made in the complaint. He highlighted that possession had been offered to the complainants in November 2018, but the copy of the Completion Certificate was not supplied to them. Also the alleged Completion Certificate did not cover the unit allotted to the complainants and hence the offer of possession was not valid. The complainants were therefore entitled for payment of interest for the delay in handing over possession, counsel concluded. On the other hand Shri Sanjeev Sharma pointed out on behalf of the respondents that possession had been offered to the complainants on 22.11.2018 and had in fact been handed over on 26.02.2019. Thus the complainants had made a false assertion that possession had not yet been handed over and the complaint was liable to be dismissed on this ground alone. It is further pointed out that the Completion Certification had been duly obtained and covered the unit allotted to the complainants. It was also pointed out that the respondents had compensated the complainants for the delay in terms of the Buyer's agreement and hence the demand for payment of interest was misplaced.

5. I have considered the rival contentions carefully and gone through the record of the case. I am of the view that the

respondents are liable to pay interest for the period of delay in handing over possession. The due date of delivery was 21.09.2015 but possession has been actually delivered on 26.02.2019. As against this however the complainants are also in the wrong for having concealed the fact that possession has been obtained by them. They took over possession on 26.02.2019 and also signed an affidavit to this effect on that date. However, in this complaint submitted on 24.04.2019 it has been clearly alleged that "*...builder is still not ready to give me possession...*". Though it is an axiom of law that he who seeks justice must do so with clean hands yet I do not hold the view that the lapse on the part of the complainants should be allowed to defeat their case altogether. However, the complainants have made themselves for some adverse consequences; and I feel that it is appropriate that interest for the period of delay may be awarded to them only till 21.09.2018 and not till the actual date of handing over of possession. Further, the amount already paid to the complainants by way of compensation for the delay is allowed to be deducted from the interest due. The complaint is therefore partly accepted. The respondents are jointly and severally directed to make payment of the amount due within 2 months from the date of receipt of this order.

Announced.



Chairperson  
Real Estate Regulatory Authority  
Punjab