

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

Complaint No.GC 1231 of 2019

Date of Institution :11.05.2019

Date of Decision: 03.09.2020

1. Vijesh Jaiswal s/o Shri Om Parkash Jaiswal
2. Reedhu Jaiswal w/o Shri Vijesh Jaiswal

Both residents of D-44, Bawa Vihar, Sector 9, Ambala, Haryana
134003

....Complainants

Versus

M/s Sushma Buildtech Limited, Unit No.B-107, Business Complex,
Elante Mall, Ist Floor, Industrial Area, Phase-1, Chandigarh 160002

.... Respondent

Present : Ms. Manju Goyal, Advocate for the complainants

Shri Vishal Singal, Advocate on behalf of Shri Sanjeev
Sharma, Advocate for the respondent

ORDER

This complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) mainly seeks redressal for the delay in delivery of possession of the residential flat purchased by the complainants from the respondent. The brief facts are that the allotment letter for Apartment no.G-403 in Tower 'G' in the project 'Sushma Chandigarh Grande' developed by the respondent was issued in the name of the complainants on 15.09.2016. The area of the unit is 1885 sq. ft. and the basic sale price was Rs.43.80 lakhs. The Buyer's Agreement was signed on 15.09.2016 and as per its terms and conditions the possession was to

be delivered within a period of 18 months (12 months plus 6 months' grace period) from the date of execution of Buyer's Agreement. The contention is that the possession has not still been delivered to the complainants. Accordingly, relief sought is early delivery of possession and payment of interest for the period of delay in doing so.

2. Notice of the complaint was served on the respondent who has submitted a detailed reply. The first legal argument raised in the reply is that in the present case there was no Agreement for Sale in the format prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 and hence the complainants could not seek any relief under the Act. It is also contended that since the date of completion of the project was 14.09.2022 the complaint was premature. On merits it has been submitted that the complainant was entitled to a compensation of only Rs.5/- per sq. ft. per month for the delay in handing over possession; and that payment of interest could not therefore be allowed.

3. The contents of the complaint and the reply were reiterated by Counsel for the parties when the matter was taken up for arguments through video conferencing on 18.08.2020.

4. The rival contentions have been carefully considered. As far as the first legal objection is concerned it is seen that the Real Estate Appellate Tribunal had in its order dated 24.07.2019 in Appeal no.49 of 2018 held that provisions of the Act would apply across the board to all projects which were ongoing at the time of coming into force of the Act. This view has subsequently been reiterated in Appeal no.16

of 2018 and other connected matters vide order dated 20.01.2020 of the Tribunal. These orders continue to be in force and hence the only conclusion possible is that the absence of agreement in Form 'A' is not fatal to the case of the complainants. I am fortified in this conclusion by the judgement of the Haryana Real Estate Appellate Tribunal in Appeal No.138 of 2019 decided on 17.12.2019. Para 34 of this order reads as follows:

".... we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion..."

Similarly, the other legal objections about the complaint being premature because the proposed date of completion for the project had not arrived also cannot be accepted. It is respondent's own case that they had offered possession on 18.11.2019. Having done so they cannot be simultaneously allowed to contend that they are not bound to deliver possession before July 2022. On merits of the case it is established on the record that there has been delay in handing over possession. As per the Buyer's Agreement possession was to be handed over on 14.03.2018 i.e maximum of 18 months after the execution of the agreement on 15.09.2016. The possession was actually offered on 18.11.2019, and a prudent and reasonable allottee would be expected to take possession thereof within 2 months. It is accordingly held that interest should be paid till 18.01.2020 i.e 2 months after the offer of possession by the

respondent. In such cases allowing interest till the date of actual delivery of possession could lead to some unscrupulous allottees trying to delay taking possession on one pretext or the other in order to earn more interest. This should not be allowed.

5. As a result of the above discussion this complaint is partly accepted and the respondent is directed to pay interest at the rate of 9.3% (highest MCLR rate of 7.3% applicable today + 2%) from 14.03.2018 to 18.01.2020. Formalities for handing over and taking of possession should be completed in 2 months.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab