

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

Complaint No.GC 1411 of 2019

Date of Institution :11.10.2019

Date of Decision: 03.09.2020

Kanshi Ram s/o Mewa Ram, House No.561. Sector 4, Panchkula,
Haryana 134112

....Complainant

Versus

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

.... Respondent

Present : Shri Robin S Sathi, 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 complainant from the respondent. The brief facts are that the allotment letter for Apartment no.F-204 in Tower 'F' of the residential complex 'Sushma Chandigarh Grande' developed by the respondent was issued on 14.02.2012. The area of the apartment was 1885 sq. ft and the basic sale price was Rs.59,90,530/-. The Buyer's Agreement was signed on 19.04.2012 and as per its terms and conditions the possession of the apartment

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was to be handed over within 48 months (42 months plus 6 months' grace period) from its execution i.e by 18.04.2016. However, possession was actually delivered on 20.07.2019 and Conveyance Deed was executed on 22.08.2019. The main relief sought is the payment of interest for the period of delay in handing over possession and also the refund of GST charged by the respondent from the complainant. It is also alleged that the respondent charged interest @24% p.a from the complainant whenever there was delay in payment of the instalments which was excessive and in contravention of the provisions of the Act - hence the excess amount paid should be refunded.

2. Notice of the complaint was served on the respondent who has submitted a reply in the matter. It is pointed out that the delay in handing over possession had been compensated by paying a sum of Rs.3,45,410/- to the complainant and hence he was not eligible for any further relief. This compensation had been paid as per the terms of the Buyer's Agreement which was binding between the parties. The order of the Supreme Court in the case '*DLF Home Panchkula Pvt. Ltd. Vs. D.S.Dhanda*' (Civil Appeal 4910-4941/2019 @SLP (C) Nos.3623-3654 of 2019, was cited in this context. It is further contended that the date of completion of the project agreed at the time of registration was 14.09.2022 and no complaint would be maintainable before this date. It is further contended that GST had been levied as per Clause 7.5 of the Agreement which provided that

any taxes etc. levied by the Government would be paid by the allottee.

3. The contents of the complaint and the reply thereof 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. To my mind the delay in delivering of possession is clearly established on the file. As per the Agreement the possession was to be delivered by 18.04.2016 but it was actually handed over on 20.07.2019; hence interest for this period has to be paid. The respondent has contended that compensation for this delay had been handed over to the complainant in accordance with the terms of the Agreement. It is seen that this Agreement provided that any delay on the part of the complainant in payment of instalments was to attract penal interest @ 24% p.a whereas the respondent was liable to pay only a compensation of Rs.5/- per sq. ft per month for the period of delay. Such one-sided terms in an Agreement has been held to be bad in law by the Supreme Court in the case of '*Pioneer Urban Land and Infrastructure Ltd. Vs Govindan Raghavan*' (Civil Appeal No.12238 of 2018). The reliance on the case of '*D.S.Dhanda*' also does not help the respondent much. It is seen that in a subsequent decision in Civil Appeal No.6239 of 2019 '*Wg Cdr. Arifur Rahman Khan and Aleya Sultana and ors Vs. DLF Southern Homes Pvt. Ltd.*' the Supreme Court in its judgement dated 24.08.2020 has clarified the true import

of *D.S.Dhanda's* judgement and laid down that it does not stipulate that there is ^{the} a lack of jurisdiction in the adjudicating authorities to award the payment of interest for the period of delay, in addition to the compensation stipulated in the Agreement. Regarding the objection that as per the registration the project was to be completed by 14.09.2022 and therefore the complaint was premature, it is held that since the respondent itself offered the possession, delivered it and also executed the Conveyance Deed in favour of the complainant they are now estopped from raising this argument. Finally, on the point of refund of GST levied by the respondent, Counsel for the complainant cited an order of the Haryana Real Estate Regulatory Authority, Panchkula, in Complaint No.779 of 2019 and other connected complaints wherein it was held that if the delivery of the apartment was to be given before the GST regime came into force with effect from 01.07.2017 then the promoter itself has to bear the liability thereof. This order has been considered but its persuasive value cannot sway the undersigned to hold in the same terms. To my mind this Authority is not the correct forum for handling disputes about payment of GST; and to adjudicate upon the liability of a particular party to pay this tax is beyond its purview. This relief therefore cannot be granted to the complainant who may move the appropriate authority to seek redressal of any grievance on this ground.

6. 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%) with effect from 18.04.2016 till 20.07.2019. The amount paid to the complainant as compensation is allowed to be set off against the amount of interest due, to avoid unjust enrichment of the complainant.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab