

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

**I.**

Complaint No.GC 1417 of 2019

Date of Institution :09.10.2019

Date of Decision: 30.06.2020

Daljeet Kaur Gill w/o Shri Gурpal Singh Gill, House No.334A, Sector  
40-A, Chandigarh 160036

....Complainant

Versus

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

.... Respondent

**II.**

Complaint No.GC 1418 of 2019

Date of Institution :10.10.2019

Date of Decision: 30.06.2020

Daljeet Kaur Gill w/o Shri Gурpal Singh Gill, House No.334A, Sector  
40-A, Chandigarh 160036

....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 Sanjeev Gupta, Advocate for the complainant

Shri Sanjeev Sharma, Advocate for the respondent

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**ORDER**

These 2 complaints will be decided by a common order since similar points of law and facts are involved in each of these, and a copy of this order be placed on each file.

2. At the outset the details of the two allotments made in favour of the complainant may be noted:-

SNo	Complaint No.	Name of project	Nature of project	Area Sq.ft	Date of allotment	Date of Buyer's Agreement	Agreed date of possession
1	GC 1417 of 2019	Sushma Infinium	Commercial	712.49	29.08.13	30.08.13	30.08.17
2	GC 1418 of 2019	Sushma Infinium	Commercial	446.73	06.11.13	06.11.13	06.11.17

The main allegations in the complaints are that as per the Buyer's Agreement entered into between the complainant and the respondent the possession of the units was to be handed over within 48 months (42 months, with a grace period of 6 months). Since the Buyer's Agreements were dated 30.08.2013 and 06.11.2013, this period had expired long ago but possession of the units had still not been handed over to the complainant. The offers of possession made on 18.04.2019 and 21.09.2019 respectively were only a token gesture since the development works at the site had not been completed by the respondent. Apart from the actual delivery of possession, the relief claimed is the payment of interest for the period of delay; to continue paying 'assured returns' at Rs.56.95 per sq. ft per month till the date of handing over actual possession; and not to charge the allegedly exorbitant annual maintenance charges. Some photographs

showing the incomplete status of development works, and copies of emails exchanged between the complainant and the respondent have been annexed with the complaints.

3. Notice of the complaints was served to the respondent who appeared and filed a reply. The maintainability of the complaints has been challenged on the following 2 grounds:-

- i. That the completion date of the project as allowed by this Authority was September 2022, and no complaint would be maintainable before this date.
- ii. Under the law the Authority was to comprise of a Chairperson and 2 full-time Members and hence complaints have to be heard only by the Full Authority and not by a single-Member Bench thereof.

On merits, it has been contended that the possession of the units had been offered to the complainant after completing all the formalities; and first obtaining Partial Completion Certificate in December 2017 and then the Completion Certificate in July 2019. Once this was done the complainant was bound to take possession of the units but was delaying it only extract more money out of the respondent by way of payment of 'assured returns' and also interest. It is further pointed out that the project was complete and that the respondent had fulfilled its obligations by paying 'assured returns' at the rate agreed to till such time as the offer of possession was made to the



complainant. Photographs showing the development works as complete have also been annexed with the reply.

4. Arguments were heard on 09.06.2020. On behalf of the complainant Shri Sanjeev Gupta firstly pointed out that the amenities promised in the brochure had not been provided by the respondent. He specifically highlighted the absence of hotels, cafes and restaurants, meeting and Conference facilities, shopping area; and also facilities such as high speed elevators etc. He further pointed out that the complainant had paid the full amount due in relation to the units as far back as 2013 but was still being denied the possession of the units allotted to her. As per the agreement the possession was to be handed over within a maximum of 48 months from the date of Buyer's Agreement, which <sup>period her</sup> had already expired in August 2017 and November 2017 respectively. Not only had the respondent not delivered the possession as agreed but had also stopped the payment of 'assured returns' which was to continue till the possession was actually handed over. In view of this, Counsel submitted that the respondent should be directed to hand over possession at an early date, pay interest for the delay in handing over possession and also the 'assured returns' promised by the respondent, and not to levy annual maintenance charges till the possession was actually handed over.

5. In reply, Shri Sanjeev Sharma, Counsel for the respondent pointed out that the project had been completed and Completion

Certificate issued by the Competent Authority. In view of this the contention that development works at the site were not complete stood falsified and the complainant had no excuse to delay taking over possession of the units. However, she was doing so only with a view obtaining more money from the respondent by way of payment of 'assured returns' and also interest. He pointed out that 'assured returns' had been paid till the possession was offered to the complainant. It was further pointed out that the complainant had agreed to the payment of annual maintenance charges while signing the Buyer's Agreement and could not now object to these charges. In fact, though the charges were stated to be exorbitant no evidence had been put forth to show that this was indeed so. Counsel finally pointed out that if interests were to be paid to the complainant for any delay in handing over possession, the amount already paid by way of 'assured returns' should be set off against this.

6. The rival contentions have been carefully considered. It would be appropriate to first take up the legal issues regarding maintainability pointed out by the respondent even though these have not been stressed up by Counsel for the respondent during his arguments. Regarding the first contention about the date of completion being September 2022, this is no doubt factually correct. However it automatically does not mean that the complaint is premature; and has to be seen in the context that the respondent has itself offered possession to the complainant after obtaining Partial Completion Certificate for the project in 2017 and the Completion

Certificate in 2019. Once this is so the respondent cannot be allowed to urge that no complaint would be maintainable against it before the period of completion of the project as approved by this Authority had been reached. The true import of the date of completion approved by this Authority is that a promoter cannot be compelled to deliver possession of a unit to an allottee before this date. But if a promoter itself offers possession of a unit to the allottee before this date it cannot be allowed to deny delivery thereof only on this account. Regarding the second objection about competence of a single-Member Bench it is no doubt true under Section 20 of the Real Estate (Regulation and Development) Act, 2016 the Authority is to consist of a Chairperson and at least 2 full-time Members. However, in my view this does not mean that every single act of the Authority has to be performed collectively by these functionaries. In fact Section 81 clearly provides for delegation of the Authority's powers to any Member or officer of the Authority or any other person. This Section reads as under:-

*"81. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85, as it may deem necessary."*

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Further, the Authority has framed the Punjab Real State Regulatory Authority (Procedure for Handling Complaints and Related Matters) Regulations, 2017. These Regulations have the force of law. Under these Regulations complaints are generally to be heard by a single-Member Bench. Hence, the legal objections regarding maintainability of the complaints are rejected. Coming to the merits of the complaints it is clear that there has been some delay in handing over possession. The two units should have been handed over to the complainant in August 2017 and November 2017 respectively. On this account, the complainant has sought continuation of the payment of the 'assured returns' promised by the respondent at the time of initial allotment. However, this is a matter not covered under the provisions of the Act. Under Section thereof, any delay in possession is to be compensated by the payment of interest and the claimed relief of 'assured returns' cannot be allowed under this Act. Further, allowing the payment of both interest and 'assured returns' would amount to unjust enrichment of the complainant. The complainant's contention that development works at the site are incomplete and the promised amenities have not been provided also cannot be upheld in view of the fact that the Completion Certificate for the project has been granted by the Competent Authority. Finally, it is also held that the complainant has been unable to substantiate the allegations that the annual maintenance charges being levied by the respondent are unreasonable or exorbitant.

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7. In view of above discussion these complaints are partly accepted, and disposed off with the following directions:-

- i. Formalities regarding handing over and taking over of possession should be completed by 15.09.2020.
- ii. The respondent would be liable to pay interest starting from 30<sup>th</sup> August 2017 in Complaint no.GC 1417 of 2019 and 6<sup>th</sup> November 2017 in Complaint no.GC 1418 of 2019 till the actual handing over of possession, at the rate of interest prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 as applicable from time to time.
- iii. The amount paid by the respondent to the complainant by way of 'assured returns' would be allowed to set off against the payment of interest as above.
- iv. Settlement of accounts shall be finalized before actual delivery of possession.

Announced.

  
Chairperson  
Real Estate Regulatory Authority  
Punjab