

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

Complaint No.GC 1413 of 2019

Date of Institution :04.10.2019

Date of Decision: 01.09.2020

1. Monica Bakhru w/o Suresh Bakhru
2. Suresh Bakhru s/o M.C. Bakhru

Both residents of House No.R-887, New Rajinder Nagar, Central
Delhi - 110060

....Complainants

Versus

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

.... Respondent

Present : Shri Vikas Sheel Verma, Advocate for the complainants
Shri Sanjeev Sharma, Advocate for the respondent

ORDER

Apartment No.G-604 in Tower 'G' of the residential project
'Sushma Crecent', developed by the respondent at Zirakpur was
allotted to the complainants vide Allotment Letter dated 14.12.2014
for a basic sale price of Rs.42,38,520/- plus various applicable
charges. The Apartment Buyer's Agreement was executed on
05.01.2015 under which the possession of the apartment was to be
delivered within a period of 42 months (36 + 6 months grace) from

this date. This period expired on 05.07.2018 but the possession was actually delivered on 18.06.2019, leading to the present complaint. The relief claimed in the complaint is to hand over physical possession of the apartment complete in all respects; payment of interest for the period of delay in handing over possession; direct the installation of the lift and the provision of covered parking as per the Buyer's Agreement.

2. Notice of the complaint was served upon the respondent who filed a detailed reply in the matter. It is pointed out therein that the complainants had obtained possession of the apartment of their free will and volition and had submitted an affidavit (Annexure R-7 with the reply) executed at Shimla on 18.06.2019 that they had accepted the possession. This affidavit stated that the complainants had accepted the apartment and confirmed that it had been built in accordance with the commitments made by the respondent. The respondent had already compensated the complainants for the slight delay in delivery of possession by way of payment of Rs.60,617/- vide cheque dated 31.07.2019 which has been encashed by the complainants. Reliance has been placed upon a judgement of the Supreme Court in the case of *'DLF Homes Panchkula Pvt. Ltd Vs. D.S. Dhanda, etc.[Civil Appeal Nos. 4910-4941 / 2019 @ SLP (C) Nos. 3623-3654 of 2019]* to contend that the only relief admissible to the complainants was as per the terms of the agreement and no interest was admissible on account of the delay. It was further pointed out

that as per the registration of the project approved by the Authority the date of completion of the project was 14.09.2022 and hence no complaint could be filed prior to this date. It was finally contended that a single-Member Bench of the Authority did not have the jurisdiction to hear the matter and hence the complaint was liable to be dismissed on this account alone.

3. Arguments of counsel for complainants were heard on 14.07.2020. Subsequently, written arguments have also been furnished by Counsel. Written arguments have also been furnished on behalf of respondent and have been taken into account.

4. The main focus of Shri Vikas Sheel Verma, Counsel for the complainants, at the time of arguments was to highlight the delay in delivery of possession. He pointed out that actually a verbal commitment had been made at the time of allotment that possession would be handed over by December 2017. However, the respondent had gone back on this commitment in the Buyer's Agreement and specified the period of 42 months (36 months plus 6 month's grace period) for delivery of possession. Even this extended period expired on 05.07.2018. The complainants were forced to accept possession on 18.06.2019 even though the respondent did not have a Completion Certificate for the project. As such this alleged delivery of possession was bad in law and could not be taken into consideration. Hence the complaint was valid and deserved to succeed, Counsel concluded. In the written submissions on behalf of the respondent the

contents of the reply have similarly been reiterated. It has also been pointed out that the Completion Certificate/Occupation Certificate for part of the project including Tower 'G' was issued by the Municipal Council, Zirakpur on 15.12.2017 (Annexure R-1 with the reply) and hence possession had been validly delivered. The slight delay in doing so had already been compensated as per the terms of Buyers' Agreement and no further relief is admissible, it is contended.

5. I have carefully considered the rival contentions and find that the delay in delivery of possession to the complainants has been established on the file. The delay is from 05.07.2018 (42 months after the signing of the Buyer's Agreement) till 18.06.2019 (date of taking over possession by the complainants) and has to be compensated by the payment of interest prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. The respondent's reliance in the case of D.S. Dhanda has been considered. It is seen that in a subsequent 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 no 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. Civil Appeal No.6239 was a matter under the Consumer Protection Act, 1986 whereas under the Real Estate (Regulation and Development) Act, 2016 payment of interest

is the only remedy provided for to compensate for any delay in handing over possession. Further, the respondent's contention that since the completion date of the project was 14.09.2022 the present complaint is premature cannot be accepted, since it had itself offered and delivered possession to the complainants. Regarding the complainants' claim for grant of parking and installation of a lift to the apartment, it is seen that these claims were raised only in the complaint. No evidence has been brought on record to corroborate these. These issues have not even been raised in the rejoinder or written arguments submitted on behalf of the complainants. Also as pointed out in the reply the complainants have taken the possession and furnished an Affidavit that they were satisfied with the apartment which complied with all the promises and representations made to them. Having done so it would be inappropriate to allow them to raise such issues at this stage, especially since the Occupation Certificate for the project is already been granted by the Competent Authority. The respondent's objection about the lack of jurisdiction in a single-Member Bench of the Authority has been rejected in a series of complaints including some relating to the present respondent. This issue therefore does not need to be discussed in detail while rejecting it. Finally, it is to be noted that complainant had cited one ruling of the Supreme Court of India, (Appeal (Civil) 5882 of 2002 decided on 24.09.04) and two rulings of National Consumer Disputes Redressal Commission [in Appeal No. 1378 of 2016 decided on 09.04.18 and another ruling cited as 1(2009) CPJ 136(NC)] to the effect that if the

builder is at fault in not delivering the possession to the allottee by the stipulated date the latter can not be expected to keep on paying instalments. These rulings however are under the Consumer Protection Act, 1986 whereas Section 19 of the Real Estate (Regulation and Development) Act, 2016 casts a duty on the allottee to make payments as per the terms of the agreement. In any case this matter of delay in payment of instalments by the complainant is not an issue in the present proceedings.

6. As a result of the above discussion the complaint is partly accepted and it is directed that the respondent should pay interest at the rate prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 to the complainants for the period 05.07.2018 to 18.06.2019 within a period of 3 months from the date of this order. Any amount that has already been paid by way of compensation is allowed to be set off from the interest so to be paid, to avoid any unjust enrichment of the complainants.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab