

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

Complaint No.GC 1288 of 2019

Date of Institution :29.04.2019

Date of Decision: 03.09.2020

1. Anjana Goyal w/o Shri S.K.Goyal
2. Shaifali Goyal d/o Shri S.K.Goyal

Both residents of House No.1042, Sector 26, Panchkula,
Haryana 134116

....Complainants

Versus

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

.... Respondent

Present : Shri Satish Mishra, Advocate for the complainants
Shri Vishal Singal, Advocate on behalf of Shri Sanjeev
Sharma, Advocate for the respondent

ORDER

Adh

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 commercial unit purchased by the complainants from the respondent. The brief facts are that the allotment letter for unit no.10 on the 4th Floor of the project "Homework" developed by the respondent in village Singhpura, Zirakpur was issued in the name of the

complainants on 11.03.2015. The area of the unit is 440.80 sq. ft. and the basic sale price was Rs.12.00 lakhs. The Buyer's Agreement was signed on 26.03.2015 and as per its terms and conditions the possession was to be delivered within a period of 42 months (36 months + 6 months' grace period). 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. It has firstly been pointed out 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 26.07.2022 the complaint was premature. Apart from the above legal issues, on merits it has been pointed out that the possession of the unit had been offered to the complainants on 02.04.2018. The complainants had been paid 'assured return' under an agreement between the parties and were not entitled for any further relief.

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 of the unit on 02.04.2018. Having done so they cannot be simultaneously allowed to contend that they

are not bound to deliver possession before July 2022. Coming to the merits of the case it is clear that there have been delay in handing over possession to the complainants. As per the Buyer's Agreement possession was to be handed over within a maximum of 42 months from the date of its execution. This period expired on 25.09.2018. The respondent's contention that possession had been offered to the complainants on 02.04.2018 is not acceptable since the letter issued on this date (Annexure R-5 with the reply) does not say anything about delivery of possession. Instead, it is only seeking payment of further amount of Rs.22,039/- from the complainants. Also the respondent has admitted that the Occupation Certificate for the project was obtained only on 21.01.2019. Any offer of possession prior to obtaining the Occupation Certificate would not be valid. There is no contention that an offer of possession has been made after obtaining the Occupation Certificate. The delay in handing over possession is therefore established. The respondent might have offered the 'assured return' to the complainants for the period of delay. However, the 'assured return' is a procedure unknown to the Act, under which only relief is by way of payment of interest at the prescribed rate.

5. As a result of the above discussion the complaint is accepted and the respondent is directed to pay interest for the period of delay i.e from 25.09.2018 till actual delivery of possession. On their part

the complainants will be bound to take possession within 2 months of its being offered. The amount paid by way of 'assured return' is allowed to be set off against the interest due, to avoid unjust enrichment of the complainants.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab