

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

Complaint No.GC 1291 of 2019

Date of Institution: 01.05.2019

Date of Decision: 03.09.2020

1. Anupam Sharma s/o Gurbhag Sharma
2. Rajneeta Radhika Karan w/o Anupam Sharma

both residents of D-3/301, Maya Garden, VIP Road, Zirakpur

....Complainants

Versus

M/s Sushma Buildtech Limited, through Managing Director, Unit No.B-107, Business Complex, Elante Mall, 1st 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

NA

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 unit purchased by the complainants from the respondent. The brief facts are that the allotment letter for Flat no A-1201 in Tower 'A' of the project 'Sushma Chandigarh Grande" developed by the respondent in Zirakpur was issued in the name of the complainants on 16.02.2015. The area of the unit is 2350 sq. ft.

(super area) and the basic sale price was Rs.98,10,410/-. The Buyer's Agreement was signed on 29.05.2015 and as per its terms and conditions the possession was to be delivered within a period of 27 months (21 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 interest for the period of delay in doing so. Some violations of the approved layout plan have also been alleged.

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. The last legal contention is that this Authority had no jurisdiction to order the payment of interest, and only the Adjudicating Officer is competent to do so. On merits it has been pointed out that under clause 14 (d) of the Buyers' Agreement any delay in delivery of possession was to be compensated by a payment of Rs 5/- per sq. ft. per month; and no interest was payable to the complainants. It has been denied that there have been any violations of the layout plans.

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. Ms Manju Goyal for the complainant also pointed out that the respondent had paid compensation for the delay till July 2019 but had stopped thereafter. She further contended that interest payable under the Act should be paid on the total price of the unit, and not just the basic sale price. On the other hand, Sh. Sanjeev Sharma argued that no violation of the layout plan had been pointed out – instead the allottees were demanding some changes in their flat, and the permissible ones had been agreed to. He conceded that any delay had to be compensated by payment of interest at the prescribed rate, and not 24% as demanded by the complainants.

4. The rival contentions have been carefully considered. As far as the first legal objection is concerned it is seen that the Punjab 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..."

It is also noteworthy that on the one hand the respondent has contended that the Agreement dated 29.5.15 is not a valid one and on the other seeks to pay compensation as per its terms rather than under the provisions of the Act. Similarly, the other legal objection about lack of jurisdiction in the Authority to order payment of interest is without merit. The case falls within the ambit of the Proviso to Section 18 (1) of the Act; and as per the order of the Punjab Real Estate Appellate Tribunal in the case of *Sandeep Mann* these cases are to be decided by the Authority. Coming to the merits of the case it is clear that there has 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 27 months from the date of its execution. This period expired on 28.08.2017 but possession is yet to offered, leave alone delivered. The delay in handing over possession is therefore established. However the date allowed by the Authority for completion of the project is 26.7.22. The respondent clearly cannot be directed to hand over possession before this date; and the

only relief permissible in the circumstances is the payment of interest. Ms Goyal has contended that interest should be paid on the total price of the unit and not only on its basic sale price. Interest however has to be paid on the actual sum of money deposited by the complainant, regardless of the sale price.

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 28.08.2017 till actual delivery of possession at the rate of 9.3% per annum (today's highest MCLR rate of 7.30% plus 2 %). The amount paid by way of compensation is allowed to be set off against the interest so due, to avoid unjust enrichment of the complainants. On their part the complainants will be bound to take possession within 2 months of its being offered after obtaining the Occupation Certificate.

Announced.



Chairperson
Real Estate Regulatory Authority
Punjab