



Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No. 3, Sector-13 A, Madhya Marg, Chandigarh – 160018

Before the Real Estate Regulatory Authority, Punjab.

Phone No. 0172-5139800, email id: pschairrera@punjab.gov.in & pachairrera@punjab.gov.in

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| 1. Execution Application No. | :- | 56/2023 in GC No. 1517/2020 |
| 2. Name & Address of the Applicant-Complainant (s)/ Allottee | :- | Sh. Vybhav Sood
S/o Sh. Naresh Kumar Sood
R/o H. No. 419, Ward No. 5, Mathura Dass Gali, Kotwali Bazar, Kangra, Himachal Pradesh -176215 |
| 3. Name & Address of the respondent (s)/ Promoter | :- | M/s Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Phase-1, Chandigarh-160002. |
| 4. Date of filing of Execution Application | :- | 27.09.2023 |
| 5. Name of the Project and Address | :- | Sushma Chandigarh Grande |
| 6. RERA Registration No. of Project | :- | PBRERA-SAS79-PR0085 |
| 7. Name of Counsel for the Applicant-complainant, if any. | :- | Sh. Rakesh Kumar, Advocate |
| 8. Name of Counsel for the respondent, if any. | :- | Sh. Sanjeev Sharma, Advocate |
| 9. Section and Rules under which order is passed | :- | Section 40(1) of the RERD Act, 2016 r.w. Rule 24 and 25 of Pb. State RERD Rules, 2017 against order dated 12.05.2021. |
| 10. Due date of possession | :- | 28.06.2019 (As per Clause 14 of the Agreement to Sale) |
| 11. Date of offer of possession | :- | 06.05.2022 |
| 12. Date of Order | :- | 07.05.2025 |

Order u/s. 40(1) of Real Estate (Regulation & Development) Act, 2016 r/w Rules 24 & 25 of Pb. State Real Estate (Regulation & Development) Rules, 2017.

The present application has been filed by the Applicant for execution of order dated 12.05.2021.

2. This Authority by way of an order u/s. 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the 'Act, 2016') dated 12.05.2021 held in the case 'Vybhav Sood Vs. M/s Sushma Buildtech Ltd.' that the respondent shall be liable to pay interest @ 9.30% per annum w.e.f. 28.06.2019 till two (2) months after a valid offer of possession is made, or till the actual date of possession, whichever is earlier of the two. For ready reference, relevant extract of order dated 12.05.2021 is reproduced hereunder:-

"7. As a result of the above discussion, this complaint is partly accepted and disposed of with the following directions:

- i. The respondent is directed to pay interest as prescribed under Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 at

the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) w.e.f. 28.06.2019 till 2 months after a valid offer of possession is made, or till the actual date of possession, whichever is earlier of the two.

- ii. *The complainant is also bound to pay interest at the above rate for any delay in making payments as per the schedule laid down in the Apartment Buyer's Agreement"*

3. The order passed u/s. 31 of the Real Estate (Regulation and Development) Act, 2016 dated 12.05.2021 was duly served on the Respondent. Since, the respondent did not comply with the said order dated 12.05.2021 and has failed to pay interest on delayed possession, the present applicant / complainant vide Diary No. 6366 dated 27.09.2023 filed the present execution application No. 56 of 2023, before Real Estate Regulatory Authority, Punjab (Henceforth referred as Authority) requesting to direct the respondent to comply with the order dated 12.05.2021 passed u/s 31 of the RERD Act, 2016. It has been submitted by the applicant / complainant that the respondent-promoter has paid a total payment of interest of Rs.16,10,268/- to the applicant / complainant after passing of the order passed u/s 31 of the RERD Act, 2016. The applicant further stated in the application that the respondent has arbitrarily enhanced the total cost of the Unit and illegally raising unauthorized claims from the applicant. As per the application, the applicant / complainant has also approached the Hon'ble State Consumer Disputes Redressal Commission, Shimla.

4. In consequence of filing of execution application, a notice was issued to Respondent i.e. M/s Sushma Buildtech Limited to appear and submit reply. The respondent has filed its reply /objections to the execution application on 17.12.2023. It is submitted in the reply by the respondent that it paid an amount of Rs. 16,10,268/- by way of interest, in compliance of the order dated 12.05.2021 passed u/s 31 by this Authority. This amount was also admitted by the applicant in the execution application. The other part of the order regarding handing over of possession could not be implemented only because of the conduct of the applicant in refusing to take possession. It is accordingly submitted that the respondent / promoter has already offered possession of the Unit in question on 06.05.2022 to the applicant / complainant after obtaining of requisite Partial Completion Certificate dated 17.03.2022 *inter alia* in respect of the Tower I in which the Unit of the applicant / complainant falls. However, the applicant / complainant who himself has failed to take the possession of unit and is now raising false and baseless allegations. It is thus stated that the order of this Authority has fully been complied with by the respondent.

5. It is further stated by the respondent that the applicant / complainant at the time of offer of possession was liable to pay a sum of Rs.9,39,176/- to respondent and possession demand letter dated 06.05.2022 was also sent along with letter of offer of possession dated 06.05.2022. As per the order of this Authority passed u/s 31, the applicant / complainant was also liable to pay interest for the delay in payments. The applicant /complainant was also liable to pay a sum of Rs.61,729/- as maintenance charges, stamp duty and registration charges. However, the applicant / complainant has neither paid the outstanding amounts nor taken the possession of the unit after offer of possession. The respondent further submitted in its reply that the applicant / complainant have also initiated the proceedings by way of filing of complaint before the Hon'ble State Consumer Disputes Redressal Commission, Shimla, on the same cause of action, which amounts to abuse of process of law. The respondent therefore beseeches before this Authority that the present execution applications deserves to be dismissed as the applicant / complainant is intentionally not taking possession of the unit and is seeking further interest, which is impermissible in law.

6. The payment of interest at a rate as provided under Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 has been provided on account of delay in possession under RERD Act, 2016 as a deterrent to promoter to complete the project in line and for allottee as an indemnification. It may be mentioned that the legislature in its wisdom has determined the rate of interest under Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 at Marginal Cost of Lending Rate (MCLR) plus 2%. This interest is paid on an idle property which is not giving any profits or its utilization to either allottee or the promoter. The rental value of fully furnished newly constructed property normally is much less than the interest being paid by the promoter under RERD Act, 2016. The delay in completion of project is a very costly affair for the promoter to make payment of 9.30% per annum on a property which is not yielding any income to any party and may need more expenses in the form of maintenance because of delay.

7. Both the parties have submitted their respective calculation sheet in compliance of the order of this Authority. The respondent has submitted the calculation sheet on 07.01.2025 depicting an amount of Rs.3,04,181/- receivable from the applicant / complainant. The applicant / complainant on the other hand has also submitted the fresh calculation sheet for the period 28.06.2019 to 31.12.2024, as per which, the total amount to be payable by the respondent to the applicant has been shown as Rs.30,38,658.10. The applicant / complainant was also directed to submit the computation sheet showing the schedule of payment made. The same was submitted by the applicant duly certified by the Chartered Accountant and as

per the said details, the applicant has made the total amount of Rs.89,79,421/-. However, the present application is only for execution of the order dated 12.05.2021 passed u/s 31 of the RERD Act whereby the applicant has paid the amount of Rs.70 lacs out of the total sale consideration of the unit. Therefore, the interest shall be calculated on this amount only. No other matter relating to agreed price, payments and / or balance has been adjudicated in this order. To make it further clear, this order is in consequence of and gives effect to the order passed u/s 31 dated 12.05.2021 by the Authority only.

8. Arguments were heard. Sh. Rakesh Kumar, Advocate appearing on behalf of the applicant, reiterated the contents of the application and written submissions / objections filed by the applicant / complainant. He contended that the applicant had not taken possession as the respondent has failed to take Completion / Occupation Certificate for the Tower in which the applicant's unit was located. Receipt of interest was however admitted. *Per contra*, Sh. Sanjeev Sharma, counsel for the respondent submitted that the respondent had already complied with the order dated 12.05.2021 in letter and spirit. The due interest had already been paid to the applicants, and vide letter dated 06.05.2022 he had been asked to take possession of the unit. Despite this, the applicant did not take possession.

Am 2 9. We have duly considered the order passed u/s 31 dated 12.05.2021; the application filed by the complainant; reply filed by the respondent/ promoter and arguments of the counsel. In view of the above factual matrix, it is held that the respondents could not comply with the orders passed u/s. 31 of the Real Estate (Regulation and Development) Act, 2016 dated 12.05.2021. Based on the written and oral submissions of the applicant and the material available on record, it is held that the respondent had failed to comply with orders passed u/s. 31 of the Real Estate (Regulation and Development) Act, 2016 dated 12.05.2021. The due date of possession as per the Agreement to Sale was 28.06.2019. The complainants continued to remain silent and did not take possession of the unit despite the alleged offer being made after obtaining the Partial Completion Certificate on 17.03.2022. Given the issuance of the Partial Completion Certificate, the offer of possession, and the existence of pending dues, it cannot be conclusively held that the promoter was in breach of delivery obligations after giving offer of possession vide letter dated 06.05.2022. Since the respondent / promoter has already obtained the Partial Completion Certificate which includes Tower I in which the applicant's unit in question was located, and subsequently, offered possession, therefore, the applicant's contention in refusing to take possession cannot be accepted. It is a trite law that the allottee is required to take possession within two months in terms of Section 19(10) of the RERD Act, 2016. The above mentioned Partial Completion

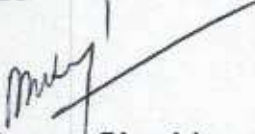
12. The respondent i.e. M/s Sushma Buildtech Ltd. is therefore held liable for an amount of Rs.3,96,982/- as on 30.06.2022. The amount of Rs.3,96,982/- is held to be "Land Revenue" under Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 and Rule 24 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 and to be collected as Land Revenue under the provisions of the Punjab Land Revenue Act, 1887 and Punjab Land Revenue Rules, 1909 by the authorities prescribed /authorized under the said Act and Rules. The Secretary of this Authority is hereby directed to further issue the Debt Recovery Certificate and send it to the jurisdictional authority under Punjab Land Revenue Act, 1887 to recover the same as "Land Revenue" and for further necessary action. Further, Sh. Vybhav Sood is held as Decree Holder and M/s Sushma Buildtech Pvt. Ltd. as Judgment Debtor for the purposes of recovery of the amounts due as calculated in the table supra. The recovery may be effected accordingly.

13. Further, the applicant / complainant is also directed to take possession of the Unit immediately by paying the balance amount, along with interest w.e.f. 01.07.2022 @ 11.10% till the date of payment on whole month basis.


14. As per the information of the parties, there are proceedings already pending before the Ld. Consumer Commission, Shimla. The complainant is directed to give a copy of this order to the relevant Authority before whom the proceedings are pending to take cognizance of this order while demanding any amount on any account under any law relating to this unit.

15. In view of the above discussions, the Execution Application is **allowed and disposed off** in the above terms.

Chandigarh
Dated: 07.05.2025


(Binod Kumar Singh)
Member


(Arunvir Vashista)
Member


(Rakesh Kumar Goyal)
Chairman

A copy of the above order be sent to the followings further necessary action:-

1. Sh. Vybhav Sood S/o Sh. Naresh Kumar Sood R/o H. No. 419, Ward No. 5, Mathura Dass Gali, Kotwali Bazar, Kangra, Himachal Pradesh -176215
2. M/s Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Phase-1, Chandigarh-160002
3. The Secretary, RERA, Punjab.
4. Director (Legal), RERA, Punjab.
5. The Master File.
6. The Record File.



(Sawan Kumar),
P.A. to Chairman
RERA, Punjab.