

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No.GC No. 0498 of 2022

Date of Institution : 05.10.2022

Date of Decision: 24.07.2025

1. Vishal Bansal
2. Shilpa Bansal

Both residents of # 10/237, Bank Street, Nabha, Patiala, Punjab, Pin Code 147201

....Complainants

Versus

1. Sushma Buildtech Pvt. Ltd. through its Managing Director,
2. Amazing Real Estate Pvt. Ltd.
3. Dream City Realtors through its Managing Director

Unit No.B-107, Business Complex, Elante Mall, Ist Floor, Industrial Area, Phase-1, Chandigarh, Pin Code 160002

4. HDFC Bank Limited, SCO No.153-155, Sector 8-C, Chandigarh, Pin Code 160009
(Impleaded as respondent no.4 vide interim order dated 27.02.2024)

....Respondents

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Registration Number: PBRERA-SAS79-PC0105)

Present: Ms. Vertika H Singh, Advocate for complainants
Shri Sanjeev Sharma, and Shri Vishal Singal, Advocates for respondents no.1 to 3
Shri Atul Goyal, Advocate for respondent no.4/HDFC Bank Limited

ORDER

This complaint is for issuance of following directions to respondents no.1 to 3:

- i. To refund the amount of Rs.21,72,500/- along with interest prescribed under Rule 16 of the Rules of 2017.
- ii. To pay interest on the amount of profit of Rs.8,60,000/-.
- iii. To pay 'Assured Returns' @12% p.a. along with interest @18% to complainants since June 2021 till the date of receiving it.
- iv. To refund Rs.60,000/- along with interest paid against additional storage space and
- v. To pay Rs.1.00 lakh as litigation charges.

2. Brief facts of the complaint as submitted by complainants are summarized below:-

- 2.1 Complainants had applied for allotment of two residential units in the project namely 'Joynest MOH-1' being developed by respondent no.1 along with its sister concern respondent no.2 against aggregate sale price of each unit as Rs.40,40,650/- with the Basic Sale Price of each unit as Rs.39,30,000/- and complainants paid Rs.24,25,000/- i.e. Rs.12,12,500/- for each unit to respondents. Accordingly, two apartments/units bearing Unit No.A103 and Unit No.A108 were allotted by respondents vide Allotment Letters dated 07.11.2017.
- 2.2 It is alleged that in 2019 on allurement of respondent no.1 complainants decided to exchange one residential Unit No.A-103 in 'Joynest MOH-1' on current price with profit of Rs.8,60,000/- with Commercial Unit No. T2/16/6th Floor (Tower-2) vide allotment letter dated 12.01.2021 in the commercial development known as "Sushma Pristine" located at Village Chhat, Zirakpur, Distt. S.A.S. Nagar, Mohali being developed by respondent no.1 in association with respondent no.3.
- 2.3 The total sale consideration for the said Commercial Unit No. T2/16 was Rs.50,12,665/-. Respondent adjusted the amount of Rs.12,12,500, from sale consideration of Residential Unit No. A-103, profit of Rs.8,60,000/- and on payment of Rs.1,00,000/- deposited by complainants as additional amount by bank transfer as token money totalling to Rs.21,72,500/- towards the sale consideration of Commercial Unit No. T2/16 with 'assured return' at the rate of 12% p.a. It was assured by respondents that remaining balance sale consideration was to be paid by bank as loan. Complainants had opted for 'Construction Linked Payment'.
- 2.4 However, 'Assured Return' due from past two years was given in May 2021 only and thereafter no 'Assured return' has been paid till date.

- 2.5 It is further submitted that execution of Buyer Agreement was also delayed by respondents. It is alleged that Residential Unit A-103 was sold to third party in 2019-2020 without closure of bank loan.
- 2.6 Thus, respondents have committed fraud and adopted 'unfair trade practice' by taking loan money from HDFC bank in the name of complainants on one hand and thereafter selling the same unit to third party on the other hand after accepting consideration without closing their loan account. However, later on the loan account was finally closed on 09.11.2021
- 2.7 It is further submitted that for the Commercial Unit a loan of Rs.27,00,000/- out of Rs.40,00,000/-, was sanctioned due to revised RBI guidelines. It is further alleged that respondents suddenly sent demand letters of Rs 28,96,734/- which were never demanded prior to 03.03.2022 and thereafter vide letter dated 11.06.2022 illegally cancelled allotment of said Commercial Unit and forfeited entire amount of complainants without accounting profit of Rs.8,60,000 and Rs.60,000/- paid by complainants against the additional storage space in basement parking area which was never allotted to complainants and even illegally charged interest on delayed payments and showed Rs.4,20,449/- recoverable from complainants, hence this complainant.
- 2.8 The relief sought by complainants is fully described in initial para of this order.
3. Upon notice, Shri Sanjeev Sharma, Advocate appeared for respondents no. 1 to 3 and submitted reply dated 14.04.2023 which is summarized below:-
- 3.1 Complainants out of total sale consideration of Rs.50,12,665/- have paid a sum of Rs.13,60,983/- only despite numerous opportunities by sending letters/show cause /reminders to avoid cancelation. Due to non-payment, the money was forfeited after cancelling the Unit

and present complaint falls under Section 11(5) of the Act of 2016 and relied upon the judgment passed by the Hon'ble Real Estate Appellate Tribunal, Punjab in the matter of "Sandeep Mann Vs RERA" which emphasizes and reiterates the position that complaints against cancelation are maintainable under section 11(5) of the Act of 2016, thus, this complaint is not maintainable.

- 3.2 Respondents admitted issuance of allotment letter dated 12.01.2021 mentioning sale price of Rs.50,12,665/- and thereafter execution of Buyer Agreement on same date. Complainants had assured that the balance payment would be paid by availing loan. Despite numerous demand letters/ notices/ termination letters complainants did not pay due amount of the allotted commercial unit and unit was cancelled and money was forfeited. A demand letter dated 03.03.2022 followed by reminder on 01.04.2022, and reminder letter-1 on 23.04.2022 to make balance payment and thereafter termination letter dated 16.05.2022 followed by Show Cause Notice was sent on 27.05.2022. Finally, the unit was cancelled and money was forfeited.
- 3.3 It is submitted that complainants are relying upon buyer agreement for possession while denying payment plan which is part of buyer agreement signed and accepted by them.
- 3.4 The allotment of unit no T-2-16 at 6th Floor in project "Sushma Pristine" was finally cancelled and money was forfeited vide letter dated 21.06.2022 which was also published in the newspapers and copy of letter dated 18.08.2022 sent confirming cancelation. As per clause 7.5 of model agreement, the forfeiture is valid and legal.
- 3.5 As per clause 7.1 of agreement for sale possession was to be delivered on 11.01.2026.

- 3.6 Respondents produced various Sections of the Act of 2016 for adjudication of the present case which are not being reproduced for the sake of brevity.
- 3.7 Relief claimed by complainants is for refund of amount after termination of agreement, and cancelation of unit and forfeiture of amount and qua this relief complaint, if any, could only be filed under section 11(5) of the Act of 2016.
- 3.8 In support of his case, respondents relied upon the following judgements:
- 3.8.1 "*Maula Bux Vs. Union of India*" – 1969 (2) SCC 554, the Hon'ble Supreme Court quoted the following observations made by the Judicial Committee in *Kunwar Chiranjit Singh Vs. Har Swarup* – AIR 1926 PC 1 –
- "Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee".
- 3.8.2 "*Shree Hanuman Cotton Mills & Ors. Vs. Tata Air Craft Ltd.*" – 1969 (3) SCC 522, the Hon'ble Supreme Court quoted the characteristics of the earnest money..."
- 3.9 It is further submitted that above referred principles were reiterated in "*Satish Batra Vs. Sudhir Rawal*" – (2013) 1 SCC 345 and if this view is accepted than Rs.6,00,000/ paid as earnest money would be forfeited.
- 3.10 Complainants have concealed their defaults, execution of the buyer agreement, cancelation letters as well as publication of cancellation in newspaper.
- 3.11 It is further submitted that any dispute arisen is to be adjudicated in terms of the Arbitration Clause.
- 3.12 Complainants have not returned original documents i.e. Application form, Buyer agreement, original Receipts etc. after forfeiture of amount.

3.13 Complainants have got possession of Unit No. A-108 allotted to them and even Conveyance Deed was also executed in their favour and the other Unit no A-103 was cancelled by complainants on their own. The plea of profit amount of Rs.8,60,000/- is wrong as complainants have paid only Rs.13,60,983/-.

3.14 It is prayed that complaint be dismissed.

4. During the proceedings of this complaint, on submission of an application by complainants, HDFC Bank Limited was impleaded as respondent no.4 vide interim order dated 27.02.2024 with a direction to file reply.

5. It is stated by newly impleaded respondent no.4/HDFC Bank Limited that complainants availed financial assistance of Rs.24,83,499/- for purchase of two properties, resultantly two loan agreements dated 19.01.2018 and 31.01.018 were executed for loan accounts No.629197146; 630204134; 629197122 and 630335885. It is submitted that complainants are borrowers of respondent no.4 and their inter-se obligations are governed by loan agreements and tripartite agreement dated 23.11.2017 and obligation to repay the loans is upon complainants. It is also stated that loan Account No. 629197122 and 630335885 were prepaid by builder on the request of borrowers/complainants on 21.10.2021. It is stressed that if any refund is allowed by this Authority, firstly it be refunded to respondent no.4/HDFC Bank Limited to be adjusted against the loan account of complainants.

6. Rejoinder dated 11.05.2023 was filed by complainants reiterating the contents of their complaint and denied the averments raised in the reply by respondents no.1 to 3. However, it is stressed that the amount paid for the residential unit No.A-103, along with its profit of Rs.8,60,000/- and additional amount of Rs.1,00,000/- paid as token money, be considered as amount paid by complainants. Complainants relied upon emails dated 12.12.2019 and 16.12.2019. It is further alleged that had the complainants sold the unit in open

market, they would have earned profit. Respondents no.1 to 3 have paid assured return of 1% p.m. on the amount of Rs.21,72,500/- only evident from Annexure R-12 despite assurance vide email dated 16.12.2019. Complainants did not default in making due payments. Respondents no.1 to 3 did not cooperate with complainants in supplying the required documents for availing loan, even buyer agreement was not executed by respondents no.1 to 3 despite various emails dated 08.05.2021, 07.09.2021 and 21.05.2022. As such these respondents cancelled the allotment in order to dispose off in the market for higher price. Respondents have violated Section 13 of the Act of 2016 as respondents have accepted more than 10% of sale consideration. Regarding not filing the complaint under Section 11(5) of the Act of 2016, it has been stated that no 'agreement for sale' has been entered into between the parties. Complainants made various requests for cancellation and also relied upon emails dated 18.04.2022; 19.05.2022; 12.06.2022; 19.06.2022 and 28.08.2022 (Annexure A-13). Complainants denied execution of buyer agreement dated 12.01.2021. Complainants denied the statement of accounts (R-11) of respondents no.1 to 3 showing Rs.13,60,983/- deposited by complainants instead complainants have deposited Rs.21,72,500/-. Respondents have given assured return till September 2021 only which is evident from Annexure R-12. Thus, complainants are entitled for refund of Rs.21,72,500/- along with interest and compensation as per Sections 12,14,18 and 19 of the Act of 2016.

7. The undersigned heard the arguments of Counsels on the stipulated date of hearing.

8. Counsel for complainants argued on the lines of her complaint as well as rejoinder.

9. On the other hand, Counsel for the respondents no.1 to 3 argued while reiterating the contents of his reply contended that complainants have

deposited only Rs.13,60,983/-. It is also argued that respondents granted sufficient opportunities to complainants to make payments and on their failure to do so, respondents terminated, cancelled their unit and forfeited the money. Cancellation was also published in the newspapers. It is also argued that respondents no.1 to 3 have paid a sum of Rs.5,62,447/- as 'assured return' to complainants and they are liable to refund this amount to respondents. It is further argued that the claim of profit of Rs.8,60,000/- is wrong and not made out in favour of the complainants.

10. It is the case of complainants that they have deposited total sum of Rs.21,72,500/- (i.e. Rs.12,12,500/- plus Rs.1,00,000/- as additional amount and Rs.8,60,000/- earned profit of sale of Residential Unit No.A-103 which was exchanged with Commercial Unit No.T2/16 and this amount of Rs.8,60,000/- was adjusted. It is also the case of the complainants that they have also paid Rs.60,000/- towards additional storage space.

11. On the other hand, it is the case of respondents no.1 to 3 that complainants have deposited only Rs.13,60,983/- and not Rs.21,72,500/- as claimed by them. Complainants were defaulter in making payments resultantly the allotment was cancelled; terminated and the amount deposited by complainants was forfeited.

12. The only relief sought by respondent no.4 is that complainants have availed loans from them and if this Authority is considering to refund the amount, then respondents no.1 to 3 be directed to firstly refund the amount to it for adjusting in the loans outstanding against the complainants.

13. The undersigned considered the rival contentions of the parties and also perused the available record on file.

14. It is admitted case of the parties that complainants booked two Units bearing No.A-103 and A-108 in the project "Joynest MOH-1" and initially paid Rs.24,25,000/- i.e Rs.12,12,500/- for each unit. Thereafter, Unit No.A-103 was

exchanged with Commercial Unit No.T2/16 in the project "Sushma Pristine" and the amount of Rs.12,12,500/- + Rs.1,00,000/- as additional amount was paid by complainants towards sale consideration of Commercial Unit fixed at Rs.50,12,665/-. It is also further the case of complainants that they have deposited Rs.60,000/- towards the additional storage space in basement parking area. In total complainants have paid Rs.13,72,500/- from their own pocket. It is alleged that a sum of Rs.8,60,000/- was earned profit on account of exchange of Unit No.A-103 with Commercial Unit No.T2/16 which is also adjusted against sale consideration of Unit No.T2/16. The prayer of complainants is for refund of Rs.21,72,500/- deposited for Commercial Unit no.T2/16 and Rs.60,000/- deposited as additional storage space along with interest thereon.

15. On the other hand, it is the case of respondents no.1 to 3 that complainants have deposited only Rs.13,60,983/- for the Commercial Unit No.T2/16 including the deposited amount of exchanged Unit No.A-103. It is also the case of respondents that complainants be directed to refund Rs.5,62,447/- paid as 'assured return' to them.

16. Perusal of Annexure R-1 which is allotment of Commercial Unit No.T2/16 attached by respondents no.1 to 3 with their reply would reveal that there is no mention of Rs.8,60,000/- claiming to be earned profit of sale of residential Unit No.A-103 in the 'Joynest MOH-1' sold by the complainants and in lieu thereof complainants purchased the said Commercial Unit No.T2/16. The emails of the month of December, 2019 (Annexure A-3) attached with complaint are prior to allotment of Commercial Unit No.T-2/16 allotted on 12.01.2021 i.e after the referred emails Annexure A-3. Annexure A-4 is a letter (without date) sent by complainant no.2 to the Manager, M/s Amazing Real Estate Pvt. Ltd./respondent no.2 requesting therein "*..to kindly shift me to Unit-T2/16, Business Spaces (784.62 sq.ft.) on 6th floor in project 'Sushma Pristine' and adjust the amount paid towards originally allotted unit to the new units.*

The balance differential amount payable for allotment of new unit shall be borne by me/us". Accordingly, allotment letter dated 12.01.2021 issued to complainant no.1 after emails of December, 2019 superseded all the previous documents/ communications exchanged between the parties. Thus, it is held that the complainants are not entitled for this amount of Rs.8,60,000/- claiming to be earned profit of earlier Unit A-103. Further, respondents have not rebutted the claim of complainants towards deposit of Rs.60,000/- as additional storage space in their reply. Thus, it is also held that complainants are entitled for refund of this amount of Rs.60,000/-.

17. It is a general financial principle that the interest of any money belongs to the person (complainants) who owns the money. In case the money is utilized by other person (respondents) without any due compensation to the owner of money, the interest earned on it should be refunded to the owner (complainants).

18. From the above discussion, it is held that the only amount refundable to complainants is Rs.13,72,500/- (Rs.12,12,500/- adjustment of sale of residential Unit A-103 + Rs.1,00,000/- deposited as token money of Commercial Unit No.T2/16 + Rs.60,000/- deposited as additional storage space in basement parking area) along with interest as per Section 18(1) of the Act of 2016 which is reproduced below:-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, apartment or building,—

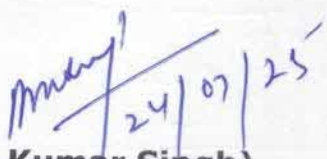
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"

19. As a net result of the above discussion, this complaint is accordingly partly allowed and respondents no.1 to 3 are directed to refund the amount of Rs.13,72,500/- along with interest at the rate of 10.90% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.90% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the date of adjustment for Rs.12,12,500/- and from the dates of payments of Rs.1,00,000/- and Rs.60,000/- respectively till the date of actual refund.
20. However, it is made clear that the first right of getting the refund is of respondent no.4/HDFC Bank Limited. Accordingly, respondents no.1 to 3 are directed to refund the due amount along with interest as stated above firstly to respondent no.4/HDFC Bank limited and pay the remaining amount to complainants.
21. Respondents no.1 to 3 are also entitled to set off the amount of Rs.5,62,447/- paid as 'assured return' to complainants from the due amount of interest.
22. It is also further directed that the remaining amount of refund along with interest thereon should be paid by respondents no.1 to 3 to complainants within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order and submit a compliance report to this Authority about releasing the remaining amount along with interest as directed.
23. It may be noteworthy that in case compliance report is not submitted by respondents no.1 to 3 after the expiry of above stated period of ninety days and further any failure to comply with or contravention of any order, or direction of this Authority may attract penalty under Section 63 of this Act of 2016.
24. The complainants are also directed to submit report to this Authority that they have received the amount along with interest as per directions issued in this order.

25. Till then the complainants shall have the charge on the allotted Commercial Unit No.T2/16 in the project "Sushma Pristine". The complainants are further directed to execute a Cancellation Deed on receipt of payment of refund and interest thereon from respondents no.1 to 3 thereafter.

26. File be consigned to record room after due compliance.


(Binod Kumar Singh)
Member, RERA, Punjab