

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

Complaint No. 0519 of 2022
Date of Institution : 28.10.2022
Date of Decision: 25.02.2025

1. Renu Chaudhary, House No.908, Sector 12-A, Panchkula, Haryana-134109
2. Amit Chaudhary, House No.2637, Sector 21, Panchkula, Haryana-134109

.... Complainants

Versus

1. Sushma Buildtech Limited, Unit No.B-107, First Floor, Business Complex, Elante Mall, Industrial Area, Phase-1, Chandigarh Pin Code 160002
2. Binder Pal Mittal, Unit No.B-107, First Floor, Business Complex, Elante Mall, Industrial Area, Phase-1, Chandigarh Pin Code 160002
3. UCO Bank, SCO No.395, Sector 8, Panchkula, Haryana Pin Code 134112

....Respondents

Present: Shri Hrithik Chaudhary, Advocate for Shri Pawan Kumar Pahwa, Advocate the complainants
Shri Sanjeev Sharma, Advocate for the respondents no.1 and 2
Shri Rahul Sharma, Advocate for respondent no.3

ORDER

This complaint in Form 'M' under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act of 2016) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017) was instituted on 28.10.2022 by the complainants in their individual capacity against respondents no.1 and 2 seeking possession of 3BHK Unit No.O1002 on 10th Floor of the project namely "Sushma Crescent" (Registration Number PBRERA-SAS79-PR0084) being developed by respondents no.1 and 2 at Village Gazipur, Hadbast No.54, Kishanpura, Sub tehsil Zirakpur, Tehsil Derabassi, District SAS Nagar, Punjab.

2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rules of 2017 are reproduced as under:

"31. Filing of complaints with the Authority or the Adjudicating Officer.-- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations".

"Rule 36. Filing of complaint with the Authority and inquiry by the Authority.[Section 31,71 (1) and 84(2)(zc)]-- (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated".

3. The complainants submitted the following in their complaint:-
- 3.1 It is stated that the complainants came to know about the real estate project of M/s Shusma Buildtech Limited at village Gazipur Hadbast No. 54, Kishanpura, Sub Tehsil Zirakpur, Tehsil Derabassi, District SAS Nagar, Punjab through authorized representative of SBL and advertisements

published in various channels assuring timely completion of project.

- 3.2 Pursuant to their application, the complainants were allotted a 3BHK residential Unit No. O1002 on tenth floor vide Allotment Letter dated 17.11.2020 in the housing project namely "Sushma Crescent" (Annexure – C1).
- 3.3 The complainants have paid Rs.6,33,610/-, with booking vide Receipts nos.6934 dated 17.10.2020 and 6958 dated 23.10.2020 as a part payment of the aforesaid flat (Annexure-C2) against the total consideration of Rs.45,01,150/-.
- 3.4 An agreement was entered into between the complainants and the respondents no.1 and 2 on 17.11.2020 (Annexure- C3).
- 3.5 The complainants have purchased the said 3BHK Unit after selling their residential property situated at Sector 21, Panchkula to get the benefit of exemption under Income Tax and to avoid rental costs.
- 3.6 The respondents have promised to give possession of the Unit by 19.05.2022, as per Clause 7.1 of the said Agreement. However, respondents no.1 and 2 did not give possession of the said Unit on time.
- 3.7 Due to the default of respondents in handing over possession in time, apart from losing the benefit of capital gain exemption available to them and the complainants are also incurring rental expenses.
- 3.8 The complainants are paying installments regularly without any default till date (Annexure – C4).

- 3.9 Despite receiving approximately 80% of the total amount i.e. Rs.35,95,601/-, the respondents have failed to complete the project.
- 3.10 Further, despite several reminders the respondents no.1 and 2 failed to hand over possession of the said Unit to the complainants (Annexure – C5).
- 3.11 The complainants requested respondents no.1 and 2 to compensate the losses incurred by them due to loss of capital gain exemption, rental cost and interest in terms of Section 18 of the Act of 2016, but in vain. Hence this complaint.
4. The prayer of the complainants is that the respondents no.1 and 2 be directed to complete the project and hand over possession of the unit. It is further prayed that respondents no.1 and 2 be also directed to pay interest at the rate of 18% per annum from the date of advance payment till its actual realization. The complainants have relied upon various documents including allotment letter, agreement and payment details etc..
5. Upon notice Shri Sanjeev Sharma, Advocate appeared for respondents no.1 and 2 and submitted their reply dated 17.08.2023 to the following effect:-
- 5.1 The respondents no.1 and 2 denied the allegations levelled in the instant complaint.
- 5.2 The complaint is not maintainable and the complainants are not entitled for interest @ 18% p.a.
- 5.3 Both the parties are bound by the terms and conditions of the agreement executed between them. The project was got delayed on account of pandemic of Covid-19 due to which construction was largely effected and the Unit could not be

completed as per agreement (Annexure R-1). There is extension of time due to *force majeure*.

5.4 Being registered project with this Authority, the respondents no.1 and 2 applied for extension of the project (Annexure R-2) and project is now to be completed by January 2024.

5.5 The respondents no.1 and 2 have not sought complete payment from the complainants, and without paying complete amount the complainants could not seek possession of the Unit.

5.6 The respondents no.1 and 2 are expediting the construction and committed to provide possession as soon as possible.

5.7 The complainants have failed to corroborate submissions for seeking interest @ 18%.

5.8 The total sale price of the plot is Rs.50,35,150/- and out of this amount, the complainants have paid Rs.35,60,000/- only.

5.9 There is no cause of action in favour of the complainants and the present complaint is an abuse of process of law. It is the prayer of respondents no.1 and 2 that the complaint be dismissed with costs.

6. It is noteworthy that there is certificate dated 29.12.2023 issued by UCO Bank/ respondent no.3 available on this file stating that a sum of Rs.25.00 lakhs was sanctioned to the complainants as loan vide Account No.18520610016985 for purchase of Unit No.O1002 on 10th Floor in the residential project "Sushma Crescent" and also showed a debit balance of Rs.18,10,458/- as on 28.12.2023 inclusive of interest upto 30.11.2023.

7. No rejoinder to the reply filed by respondents no.1 and 2 has been filed by the complainants.

8. Both the Counsels for the complainants as well as respondents no.1 and 2 addressed their respective arguments on 13.02.2025.

9. Learned Counsel for the complainants argued that they were allotted a 3BHK residential Unit No. O1002 on tenth floor vide Allotment Letter dated 17.11.2020 in the project "Sushma Crescent", by respondents no.1 and 2. Thereafter, an agreement was also entered into between the parties on 17.11.2020, and possession was to be delivered on 19.05.2022, as per Clause 7.1 of the said Agreement but the respondents no.1 and 2 failed to do so. It was further argued that the complainants apart from losing the benefit of capital gain exemption are also incurring rental expenses. The complainants have paid Rs.35,95,601/-. Thus, failure to hand over possession on time by respondents no.1 and 2, the complainants are entitled for interest for the period of delay as per Section 18 of the Act of 2016.

10. Counsel for respondents no.1 and 2 while reiterating the contents of his reply dated 17.08.2023 to justify the delay in delivery of possession stated that the delay in construction caused by the lockdown imposed on account of Covid-19 pandemic. Respondents no.1 and 2 admitted the receipt of Rs.35,60,000/- out of total sale consideration of the Unit to be Rs.50,35,150/- and prayed that there is no cause of action arose in favour of the complainants to file the instant complaint and prayed that the instant complaint be dismissed with costs.

11. The undersigned considered the rival contentions of both the parties and also perused the pleadings along with documents annexed by both the parties.

12. There is no dispute about the issuance of allotment letter, entering into agreement by the complainants with respondents no.1 and 2, receipt

of payment by respondents no.1 and 2 and as per Clause 7.1 of the agreement the date of possession mentioned in it as 19.05.2022.

13. It is established on record that till today possession of Unit has not been handed over to the complainants. Regarding the pandemic of Covid-19, due to which respondents no.1 and 2 were not able to give possession of the Unit to the complainants is without any substance as the date of possession was 19.05.2022 and the pandemic was from March 2020. It is noteworthy that the agreement was executed on 17.11.2020 during the course of the Covid-19 itself. If respondents no.1 and 2 can execute the agreement and accept the amount for the Unit during the occurrence of the Covid-19, they are liable to hand over possession on time as prescribed in the agreement dated 17.11.2020. Thus, it is held that the complainants are entitled for interest to be paid by respondents no.1 and 2 for the period of delay in handing over possession of the above said Unit.

14. For the sake of convenience, Section 18 (1) of the Act reads as under:

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

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2)

(3)"

15. As a result of the above discussion, this complaint is accordingly allowed and respondents no.1 and 2 are directed

15.1 to pay interest under Section 18(1) of the Act of 2016 at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainants w.e.f 20.05.2022 till the date of this order and in the first instance, the arrear of interest would be paid 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.

15.2 Respondents no.1 and 2 are further directed to pay interest under Section 18(1) of the Act at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainants from the date of this order till the date of delivery of legal valid possession of the Unit No. 3BHK Unit No.O1002 on 10th Floor of the project namely "Sushma Crescent" being developed by respondents no.1 and 2 at Village Gazipur, Hadbast No.54, Kishanpura, Sub tehsil Zirakpur, Tehsil Derabassi, District SAS Nagar, Punjab and submit the compliance report.


16. It may be noteworthy that in case compliance report is not submitted by respondents no.1 and 2 after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act of 2016.

17. The complainants are also directed to submit report to this Authority that they have received the amount of interest as directed in this order.

18. Further, the complainants are bound to pay the outstanding amount, if any, before taking the possession of the Unit as per Section 19(10) of the Act of 2016 which reads as under:-

"(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be".

19. File be consigned to the record room after due compliance.


(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab