



Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh – 160018

Before the Bench of Sh. Rakesh Kumar Goyal, Chairman.

1. **Complaint No.** :- GCNo05952022
2. **Name & Address of the complainant (s)/ Allottee** :-
 1. Ms. Supriya Sharma
 2. Ms. Sarla Devi

(Both r/o House No. 1136, Sector 18/C, Chandigarh-160018)
3. **Name & Address of the respondent (s)/ Promoter** :-
 1. Address Infrastructures pvt. Ltd.
The Address, Sector 17, PR-4,
Near International Cricket Stadium,
New Chandigarh,
Sahibzada Ajit Singh Nagar (Mohali),
Punjab –160014
 2. Housing Development Finance Corporation Ltd,
SCO 153-155, Sector 8-C, Chandigarh - 160009
4. **Date of filing of complaint** :- 19.12.2022
5. **Name of the Project** :- The Address
6. **RERA Registration No.** :- PBRERA-SAS80-PR0178
7. **Name of Counsel for the complainant, if any.** :- Sh. Sanjeev Gupta and Sh. Ripudaman Singh, Advocates for the complainant
8. **Name of Counsel for the respondent, if any.** :- Sh. Mohd. Sartaj Khan, Sh. Vipul Khurana, Ms. Aanchal, Ms. Ravneet Kaur, Advocates for respondent no.1.

Sh. Karan Singh, Advocate for respondent no. 2.
9. **Section and Rules under which order is passed** :- Section 31 of the RERD Act, 2016 r.w. Rule 36 of Pb. State RERD Rules, 2017.
10. **Date of Order** :- 14.01.2025

Order u/s. 31 of Real Estate (Regulation & Development) Act, 2016 read with Rule 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017.

The present complaint dated 19.12.2022 was filed by Ms. Supriya Sharma and Ms. Sarla Devi (hereinafter referred as the 'Complainants') u/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'RERD Act, 2016') read with Rule 36 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the 'Rules') before the Real Estate Regulatory Authority, Punjab (hereinafter referred as 'Authority') relating to the project 'The Address' at Village Togan, New Chandigarh, District SAS Nagar (Mohali) against the respondent-promoter Address Infrastructures Pvt. Ltd.

2. The brief gist of the complaint as alleged by the complainant is that in December 2020, the complainants booked a 3 BHK Apartment No. 303 at 3rd Floor in Tower D having a super area of 1150 sq. ft. in the project named 'the Address' at Village Togan, New Chandigarh, District SAS Nagar (Mohali), developed by

respondent no. 1. The total sale consideration of the apartment was Rs.46,17,250/- inclusive of charges for power backup, club membership, IFMS, and car parking, with applicable taxes to be paid by the complainants. An allotment letter was issued on 20.01.2021, followed by an "Agreement for Sale" dated 21.01.2021 was executed *inter-parties*, which included a payment plan and stipulated that possession would be delivered on or before November 2021 as per Clause 7.1 of the Agreement for Sale. The complainants secured a loan from HDFC Bank and paid Rs.39,37,500/- to the respondent. Subsequently, the respondent waived certain charges, reducing the sale consideration to Rs.43,92,250/-. Despite these payments, the respondent failed to commence floor finishing work or raise the corresponding payment demand and has not handed over possession of the apartment till the filing of the present complaint. The complainants allege service deficiencies, as the respondent has not completed the construction or adhered to the possession timeline. They seek to remain in the project and demand interest on the paid amount for each month on account of delayed period in handing over possession alongwith all formalities, including the occupancy certificate etc.

3. In response to notice, the respondents have filed their replies (dated 22.05.2023 of respondent no. 1 and 11.04.2023 of respondent no.2).

➤ **The main averments of respondent no. 1 in the reply are as follows:-**

i. The complainants were allotted a 3BHK apartment (No. 303, 3rd Floor, Tower D) on 20th January 2021, for a total sale consideration of Rs. 46,17,250/-. An agreement was executed, and Rs.24,00,000/- was paid as part payment. The agreed possession date was November 2021, subject to "Force Majeure" conditions.

ii. The respondent no. 1 submitted that the complaint is not maintainable, based on vague and baseless assumptions. They highlight jurisdictional issues, stating that the case requires detailed evidence unsuitable for summary adjudication. The respondent cites *Synco Industries vs. State Bank of Bikaner & Jaipur* to support this claim. They argue the complaint lacks a



cause of action and that the complainants have concealed facts, invoking the principle of estoppel.

iii. The respondent attributes project delays to Covid-19-related "Force Majeure," which led to government-mandated extensions. They emphasize that the project is now progressing, with efforts to deliver possession soon. Additionally, the respondent has waived Rs.2,25,000/- as a goodwill gesture.

iv. The respondent has resumed full-scale construction and is committed to delivering possession as soon as possible.

➤ **The main averments of respondent no. 2 in the reply are as follows:-**

The complainants' grievances are primarily against the developer-promoter, with no substantial claims against HDFC Limited. The borrowers' obligations are governed by the loan and tripartite agreements, which remain undisputed. HDFC has the right to recover dues in case of default as per these agreements, and holds the first charge in the event of unit cancellation or termination of the Floor Buyer's Agreement. The borrowers' responsibility to repay the loan is independent of any disputes with the developer, and they remain liable even if the developer defaults. HDFC has disbursed Rs.11,62,500/- of an Rs.18,00,000/- loan, and the loan account is currently regular. HDFC reserves the right to enforce the terms of the loan agreement if necessary.

7. The violations and contraventions contained in the complaint were given to the representative of the respondents to which they denied and did not plead guilty. The complaint was proceeded for further inquiry.

8. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. It is also pertinent to note here that till the date of filing of the rejoinder, the complainants have paid the entire demanded amount of Rs.39,37,500/- to the respondent and respondent no. 1 has failed to deliver the possession as per



Agreement for Sale. As regards waiving off of Rs.2,25,000/- as a goodwill gesture, it is adjustment made by the respondent no.1 due to delay in handing over possession. The respondent had not waived off the said charges out of its own will.

9. That representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarised above. I have duly considered the documents filed and submissions of the parties i.e., complainant and respondents.

10. The undisputed facts of the case are that the complainants booked a 3 BHK Apartment No. 303 at 3rd Floor in Tower D having a super area of 1150 sq. ft. in the project named 'the Address' at Village Togan, New Chandigarh, District SAS Nagar (Mohali), developed by respondent no. 1. The total sale consideration of the apartment was Rs.46,17,250/-, inclusive of charges for power backup, club membership, IFMS, and car parking, with applicable taxes to be paid by the complainants. Out of Rs.46,17,25/- an amount of Rs.39,37,500/- had already been paid by the complainants and an allotment letter was issued on 20.01.2021, followed by an "Agreement for Sale" dated 21.01.2021 was executed *inter-parties* and stipulated that possession would be delivered on or before November 2021 as per Clause 7.1 of it. Additionally, the respondent has adjusted an amount of Rs.2,25,000/- on account of interest towards the delayed period in offering the possession. Till the date of arguments, respondent no. 2 had submitted that an amount of Rs.1,55,786/- are pending against the complainants and they are paying it regularly without defaulting any EMI.

11. During the course of arguments, a query was put to the Ld. Counsel for the respondent no.1 "whether possession of the apartment has been handed over to the complainant or not"? the answer was in the negative. Thus, it is established on record that till date possession has not been handed over to the complainant so far. Further, the Ld. Counsel for the respondent has not produced any document on record to show that the complainant has delayed the payment as per schedule. *Force Majeure* plea also does not hold much water in this case, as



the Agreement for Sale executed *inter-parties* was subsequent to the expiry of COVID-19 timeline. Therefore this plea of force-majeure is declined.

12. It is apparent on record that delay of many years has taken place in handing over possession to the complainant and it is likely to get further delayed since certain formalities/certification are still pending on the part of the respondent. Keeping in view the above facts, the default on the part of the respondent No.1, not in delivering possession of the flat in question within the stipulated period as per allotment letter. Non-handing over of possession is in of Section 18(1) of the Act, 2016 and as such, the complainant is entitled to relief of interest on account of delayed period read with Rule 16 of the Rules, 2017. It 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, 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:

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.”



13. In view of the above, the complaint is **Partly Allowed** and complainant is entitled for interest upon the delayed period w.e.f. 01.12.2021 (i.e. from the date of possession) @ 11.10% (i.e. 9.10% SBI's Highest MCLR Rate applicable as on 14.01.2025 + 2%) till the date of valid offer of possession, as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The respondent is directed to hand over the possession to the complainants at the earlier. The complainant is also directed to pay the balance payment to the respondent at the time of valid offer of possession after deduction from the interest accrued from the delayed possession. Further, it is also pertinent to note here that till the clearing of balance EMIs which are to be paid to respondent no.2 by the complainants, the first lien over the interest accrued will be of respondent no.2. The

period for payment of interest will be considered from the next month in which payment was effected by the allottee to the previous month of the date in which payment has been effected by the promoter. Therefore, the calculation of delayed interest upto 31.12.2024 is calculated as follows:-

Interest payable from	Principal Amount Paid	Interest Calculated till	Rate of Interest as per order	Tenure	Interest Amount
1	2	3	4	5	6
01.12.2021	39,37,500/-	31.12.2024	11.10%	37 months	13,47,614/-

14. The total amount due towards delayed interest upto 31.12.2014 is Rs.13,47,614/- and the respondent no.1 is directed to make the payments within 90 days to the complainants and offer valid offer of possession. After, 01.01.2025 the promoter is liable to pay an amount of Rs.36,422/- per month as interest till the possession is not offered to the complainants.

15. No other relief is made out.

16. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.


Chandigarh
Dated: 14.01.2025




(Rakesh Kumar Goyal),
Chairman,
RERA, Punjab.

A copy of the above order may be sent by the Registry of this Authority to the followings:-

1. Ms. Supriya Sharma
2. Ms. Sarla Devi
(Both r/o House No. 1136, Sector 18/C, Chandigarh- 160018)
3. Address Infrastructures Pvt. Ltd., The Address, Sector 17, PR-4, Near International Cricket Stadium, New Chandigarh, Sahibzada Ajit Singh Nagar (Mohali), Punjab -160014
4. Housing Development Finance Corporation Ltd, SCO 153-155, Sector 8-C, Chandigarh - 160009
- ✓ 5. The Complaint File.
6. The Master File.


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