

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

Complaint No.0188 of 2023
Date of Institution : 28.05.2023
Date of Decision: 30.04.2025

Pinky Nain d/o Shri Chattar Singh Nain, House No.1079, Sector 18-C,
Chandigarh, Pin Code 160018

....Complainant

Versus

Suksha Developers Private Limited, B-107, First Floor, Business Complex at
Elante Mall, Industrial Area, Phase-1, Chandigarh, Pin Code 160001

....Respondent

Present: Shri Suresh Kumar, Advocate for the complainant
Shri Harveet Singh Sehgal, Advocate for the respondent

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 28.05.2023 by the complainant in her individual capacity against the respondent with reference to Section 18 of the Act of 2016 seeking the following directions to the respondent:

- i. To provide all the basic amenities to the complainant as agreed in the agreement i.e electricity connection from PSPCL, Club House, proper car parking etc. etc. alongwith completion/occupation certificate.
- ii. To refund the maintenance charges for the months of December 2022 and January 2023 and also to adjust the maintenance charges taken in advance and not charge maintenance till the issuance of the occupation certificate/completion certificate.

- iii. To pay interest for the period of delay in handing over possession w.e.f. 15.12.2021 till the delivery of valid possession.
2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rule 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 complainant submitted the following in the complaint:-

- 3.1 It is submitted that apartment No. R4-055/04 of "Sushma Valencia" located at Village Nagla, M.C. Zirakpur, District SAS Nagar. Mohali, Punjab admeasuring 199.97 sq. yards (167.20 sq. mtrs) along with one stilt car parking was allotted to the

complainant vide allotment letter dated 12.4.2019 for a sale price of Rs.59,40,000/- plus applicable taxes after execution of agreement for sale dated 16.3.2019.

- 3.2 As per sub clause 7.1 of Clause 7 possession of the said apartment was to be handed over on 15.12.2021 after obtaining completion/occupation certificate. As per clause 11 the promoter shall be responsible to provide and maintain essential services of the project till the taking over of the maintenance of the project by the association of allottees.
- 3.3 The complainant received the offer of possession along with demand letter dated 01.12.2022 of Rs.81,762/- as maintenance charges for the period w.e.f. 20.12.2022 to 30.9.2024.
- 3.4 The complainant paid all the amounts demanded by the respondent on or before 24.12.2022 including the future maintenance charges, but on her visit she noticed that the work of the apartment was under construction and informed the respondent.
- 3.5 However, instead of completing the construction, respondent sent possession reminder dated 05.01.2023 asking for holding charges of Rs.1249/-.
- 3.6 To avoid payment of holding charges, the complainant took over possession of the apartment on 10.01.2023 without payment of interest for delayed period.
- 3.7 On shifting to her flat on 29.01.2023 she found that the lift was not in operation and there was dampness in the room, kitchen and balcony due to construction work. Various amenities were

not available, accordingly complainant sent email dated 6.2.2023 (Annexure C-6) requesting the respondent to provide the basic amenities followed by repeated written request, such as one independent covered car parking, club house, gym etc and for repairing the seepage and other shortcomings.

3.8 The work of plot of complainant is still under construction and there is no cleanliness around the area. The respondent has not provided permanent electricity connection from PSPCL. There are seepage and cracks on the walls inside the apartment and even maintenance services are not available to her.

3.9 Offer of possession was without occupation certificate and the respondent cannot charge maintenance without it. Thus, the respondent has violated various mandatory provisions of the Act of 2016.

3.10 The complainant sought the following reliefs through her complaint:

3.10.1 To provide all the basic amenities to the complainant as agreed in the agreement i.e electricity connection from PSPCL, Club House, proper car parking etc. etc. alongwith completion/occupation certificate.

3.10.2 To refund the maintenance charges for the months of December 2022 and January 2023 and also to adjust the maintenance charges taken in advance and not charge maintenance till the issuance of the occupation certificate/completion certificate.

3.10.3 To pay interest for the period of delay in handing over possession w.e.f. 15.12.2021 till the delivery of valid possession.

3.10.4 To impose penalty for the violations of the relevant provisions of the Act of 2016.

4. Upon notice, reply dated 26.10.2023 was filed by the respondent which is summarized below:

4.1 While taking preliminary objections that the contents of the complaint are false and the complainant has not approached this Authority with clean hands, the respondent repeated the contents of the complaint i.e signing of agreement for sale for Uni No.R4-055/04, 4th Floor on 16.03.2019, execution of tripartite agreement with the respondent and HDFC in March 2019, issuance of allotment letter on 12.04.2019.

4.2 Since the complainant was not making payment the respondent issued demand letter on 13.04.2019 followed by reminders on 28.05.2019, 05.07.2019, 26.07.2019, 11.09.2019 and thereafter on 28.09.2019.

4.3 It is further contended that since the complainant failed to comply with payment schedule, the respondent had no option but to issue termination letter on 21.09.2019 following by a show cause notice on 03.12.2019.

4.4 It is further averred that despite issuance of show cause notice the complainant was not regular in making payments, respondent issued cancelled letter on 06.01.2020 and thereafter a letter dated 21.01.2020 to the complainant informing her

balance refundable amount to her as per the agreement. However, on ensuring by the complainant to make the outstanding payments, the respondent had not cancelled the unit allotted to the complainant.

4.5 It is further stated that upon offer of possession demand letter dated 01.12.2022, the complainant wilfully accepted possession on 14.01.2023 by submitting a letter and noted that the construction was going on, installation of lift was pending along with allotment of car parking. This project being Mega Project, the complainant cannot ask the respondent to stop the development work, repair, and renovation in respect of the project. Regarding the list it is stated by the respondent that a new and modern lift has been installed in the tower and denied the allegations of the complainant.

4.6 The respondent relied upon undertaking dated 16.01.2023 to pay monthly charges for operation and maintenance and she was fully satisfied about the layout of the complex, parks, electric poles etc. etc. The respondent attached a copy of certificate of possession dated 16.01.2023 with his reply. She thereafter submitted an affidavit on 17.01.2023 duly notarized to the effect that she has inspected the building plan, fittings/furnishings and quality of construction carried out by the respondent.

4.7 Respondent never refused to provide maintenance services as per entitlement. The photographs submitted by the complainant are not true and factual position at the site of the complainant. The complainant after possession of the unit executed maintenance agreement willingly.

- 4.8 On merit, it is stated that the complainant had not claimed any point of point for a particular maintenance and that was refused.
- 4.9 Regarding the relief of electricity connection it is stated that proper electricity connection has already been provided by PSPCL. However, due to erratic supply, in-house generators have been installed by the respondent on the same cost as charged by PSPCL. The complainant has already been provided car parking. Further regarding the club house/Gym, the same under construction/renovation and major improvements are being carried out for the benefit of the allottees/residents.
- 4.10 Regarding the relief of refund of maintenance charges, it is stated by the respondent that the same has been paid by the complainant as per terms and conditions of the maintenance agreement for the services already availed by her. No maintenance services have been refused to the complainant.
- 4.11 Since the Project is Mega one, many part of it is under development, but the Apartment of the complainant was duly completed as per specifications and possession was taken by her on 16.01.2023 and the purported photos are not in the vicinity of the apartment of the complainant but are of other part of the project.
- 4.12 Regarding payment interest it is stated that possession was taken over by the complainant on 16.01.2023 and she issued satisfaction certificate vide affidavit on 17.01.2023 duly notarized. As per clause 7.1 of the agreement for sale dated 16.03.2019, possession was to be handed over on 15.12.2021. However, the delay was occurred due to pandemic of Covid-19

and respondent relied upon Circular No.RERA/ENF/2020-20 dated 13.05.2020. Regarding other reliefs, the respondent has not violated any provisions of the Act and prayed that this complaint be dismissed.

5. The complainant submitted her rejoinder dated 20.06.2024 controverting the contents of the reply submitted by the respondent. It is stated that the signatures of the complainant were obtained on the undertaking and affidavit on the typed proforma forcibly under threat and also forced to take possession of the apartment. The complainant was further threatened that if she will not accept offer of possession the respondent will charge holdings charges from the date of issuance of offer of possession. The complainant also relied upon Section 11(4) of the Act of 2016. It is further contended by the complainant that the respondent was bound to provide permanent electricity connection from PSPCL and the electricity being provided through in-house generators. The complainant was provided with new electricity meter by the respondent at the time of handing over of possession despite of good working of the earlier old meter with low consumption with bill amount less than Rs.1000/-. However, on installation of newly installed electricity meter, the complainant receiving electricity bill of Rs.1113/- for the consumption of 159 units and the future electricity bills were more than Rs.1000/-. The respondent even stopped the supply of electricity w.e.f. 27.04.2024 and she lodged complaint with the police. The complainant also sent email dated 16.05.2024 to the respondent to restore the electricity and thereafter also lodged police complaint. The complainant further objected to the circular relied upon issued during pandemic of Covid-19 by the respondent stating that nowhere it was written that the date of delivery of possession has been extended further. Just to avoid payment of interest for the period of delay, the respondent is relying upon said circular. The complainant again reiterated that the respondent has not provided club

house/gym and proper car parking. Even no occupancy/completion certificate has been supplied to the complainant. Lastly, it is prayed that the complainant is entitled for payment of interest for the period of delay.

6. The undersigned heard the arguments of both the parties on the stipulated date.

7. Learned Counsel for the complainant reiterated and repeated the contents of his complaint as well as rejoinder.

8. learned Counsel for the respondent also stressed upon the contents of his reply and stated that the complainant has levelled frivolous allegations against the respondent despite providing of the services.

9. It is noteworthy that the complainant submitted an application dated 20.06.2024 for restoration of the electricity during the pendency of the present complaint. The then Authority vide interim order dated 11.07.2024 passed the order on the said application for restoration of the supply the relevant portion is reproduced below:-

"11.07.2024.....

..I have considered the above submissions. The respondent is accordingly directed to restore the power connection within 24 hours. However, in case there is any due towards the complainant, the respondent is directed to issue separate demand notice for the same and the complainant is further directed to pay the same without any delay. Thus, the application for restoration of electricity connection is disposed of accordingly..."

10. Further, as per interim order dated 14.11.2024, Director (Town & Planning) of this Authority visited the site and submitted the report on 07.04.2025 which is reproduced below:-

"Subject: - GCNo01882023 titles as 'Pinky Nain Daughter of Sh. Chattar Singh Nain V/s Suksha Developers Pvt. Ltd'.

As directed by your good-self during the hearing of above-mentioned case, it is apprised further to the comments of the undersigned dated 13.12.2024, the report regarding violation by the Promoter viz-a-viz the Sanctioned Layout Plan is a given below: -

1. Construction of illegal Club House in the project site.

- (i) The representative of the Promoter apprised during the discussion that the Club House is proposed in the Sanctioned Layout Plan and the construction is being done accordingly. However, in the Revised Registration Letter dated 11.03.2022 (Annexure-1) was issued to the Promoter named M/s Suksha Developer Pvt. Ltd. and M/s Shipra Estate Limited, no Club House Site has been registered.
- (ii) Moreover, in the part Layout Plan of Super Mega Mixed Use Integrated Industrial Park Project Drg. No. SEL-ZDP1-04R5 dated 20.11.2018 (Annexure-2) uploaded by the Promoter on the online portal, no Club House Site is proposed in the project site.
- (iii) However, it was observed during the site visit that Club House building is being constructed on plot no. 58 (unit No. 58 A-D), which is proposed as a Residential Plot/units and the said plot is also registered as Residential Plot (Stilt+4). Which clearly indicates that the Club House building being constructed in violation to the Sanctioned Layout Plan and without the approval of Building Plans of the Club House Building.

In this regard, it is apprised by the complainants that in the brochure presented to them before sale/allotment, there was a mention of providing the Club House facility in the project site. Later, under the pressure of the allottees to fulfil this commitment, the Promoter is now illegally constructing this Club House Building.

2. Circulation to stilt car parking not provided as Sanctioned Plans.

It was also observed during the site visit that the set back of the Independent Floors have been maintained with landscaping, whereas, these set-backs are proposed for circulation of the stilt car parking as shown on the Zoning Plan for Residential Independent Floors for Pocket R1 & R4

Super Mega Mixed Use Integrated Industrial Park Project Drg. No. 01 dated 31.05.2019 (Annexure-3). As a result, the one side movement of car parking is restricted and during the emergency, it is not possible to take car out of parking from this side causing inconvenience to the residents.

Submitted Please.

Sd/-
Director (TP)
07.04.2025"

11. As per clause 7.1 of the agreement for sale dated 16.03.2019 possession was to be handed over on 15.12.2021. It is admitted fact that possession was taken over by the complainant on 14.01.2023 as per possession letter. However, there is 'hand written note on the said possession letter' (Annexure R-12 attached with the reply) signed by the complainant on 14.01.2023 which reads as under:

"Till date construction is going on in my tower and lift installation is also pending. Car parking not allotted.

Sd/- Pinky Nain 14.01.2023.

12. Further, Annexure R-12 is the undertaking duly signed by the complainant also on 14.01.2023 wherein the complainant acknowledged that *"..I/We hereby undertake to pay the monthly charges for operation and maintenance services, at such rates, as decided by the company, from the date on which an offer of possession is made by the Company..."*

13. The allegations that affidavit & undertakings were forcibly signed has no documentary or corroborative evidence to support, thus the same is not adjudicated upon.

14. Annexure R-16 is the Maintenance Agreement (without date) executed between M/s Manhattan Infra Services Private Limited (service provider) and

Pinky Nain (complainant), attached by the respondent with his reply. Clause 6.1 of Clause 6 MAINTENANCE CHARGES is reproduced below:-

"6.1 The Unit Buyer shall pay maintenance charges calculated as per Rs.3,198/- per month ("Maintenance Charges") plus GST for Maintenance Services. The Maintenance Charges along with applicable tax shall be paid by the Unit Buyer in advance for the entire term, on or before 20.12.2022".

15. It is the case of the complainant that she paid the maintenance charges and sought refund of maintenance charges for the months of December 2022 and January 2023. It is an admitted fact between both the parties that possession of the apartment was handed over to the complainant 14.01.2023 which is corroborated by possession letter and undertaking duly signed by the complainant. As per maintenance agreement the monthly charges are of Rs.3,198/-. It is held that when the complainant took possession of the apartment on 14.01.2023, she is not liable to pay maintenance charges for the month of December 2022 and first half of January 2023.

16. It is noteworthy that in the interim order dated 14.11.2024 it was recorded that "Ld. Counsel for the complainant stated that the amenities as promised by the respondent have not been provided". It was further recorded in the said order that "Ld. Counsel for the respondent stated that except Club House, all the amenities are provided to the allottees.." A direction was issued to the team of this Authority to visit the site and report. (Already reproduced above).

17. As noted above, possession was to be handed over on 15.12.2021 as per Clause 7.1 of the agreement for sale dated 16.03.2019. It is admitted fact between the parties that possession was handed over/taken over by the complainant on 14.01.2023 as per possession letter. Thus, there is apparent

delay on the part of the respondent in handing over possession of the apartment to the complainant. This case is accordingly squarely covered within the definition of Section 18 of the Act which reads as under:-

"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) ...

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)..."

18. As a result of the above discussion, this complaint is accordingly allowed and respondent is directed 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 complainant from 15.12.2021(the actual date of delivery of possession) to 14.01.2023(possession offered/taken over by the complainant,) within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 2017 from the date of receipt of this order and submit the compliance report.

19. The respondent is further directed to refund the maintenance charges taken at the rate of Rs.3,198/- per month for the period of December 2022 and part of January 2023 till the date of possession.

20. As per the report of the officers of this authority the stilt parking is restricted to certain extent. The respondent is directed to provide ingress and egress in parking as per the layout plan.

21. It may be noteworthy that in case compliance report is not submitted by the respondent 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.

22. The complainant is also directed to submit report to this Authority that they have received the amount of interest as directed in this order.

23. Regarding findings of club house and any deficiency, the complainant is at the liberty to approach the adjudicating officer through application in form "N".

File be consigned to the record room after due compliance.



(Binod Kumar Singh)
Member, RERA, Punjab