

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

Complaint No. 0257 of 2023
Date of Institution : 15.07.2023
Date of Decision: 08.07.2025

1. Ankit Gupta
2. Suresh Gupta

Both residents of House No.7, Dhillon Colony, near Mohindra College,
Patiala, Punjab, Pin Code 147001

....Complainants

Versus

Sushma Buildtech Limited, Ist Floor, Business Complete, Elante Mall,
Industrial Area, Phase-1, Chandigarh, Pin Code 160002

....Respondent

Present: Shri Saurabh Garg, Advocate for the complainants
Shri Sanjeev Sharma, and Shri Vishal Singal, Advocates for
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 15.07.2023 by complainants as individuals against respondent seeking possession of the allotted unit and interest for the period of delay in handing over valid possession.

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

2.1 Complainants purchased Unit K-302 in 'Sushma Crescent Phase 2' on 18.09.2020 from respondent and it was promised by respondent to hand over possession on 20.03.2022. 19 months have passed but possession has not been handed over to complainants.

2.2 It is submitted that complainants are paying rent of Rs.21,000/- per month (total rent paid from November 2022 till 5th September

2023 is Rs.2,31,000) and also paying EMI of Rs.20,500 every month on the home loan of Rs.26,30,000 which causing additional financial stress.

2.3 It is alleged that respondent forced complainants to pay additional amount of Rs.2,24,336 by sending threatening letters to cancel the allotment and to pay additional interest.

2.4 It is submitted that complainants signed the agreement and accepted offer of Rs.15,000/-.

2.5 It is the prayer of complainants

2.5.1 to direct respondent to pay interest with effect from 20.03.2022 as per State Bank of India's highest Marginal Cost of Lending Rate plus two percent till valid legal possession.

2.5.2 To award difference of Rs.7,500/- per month as respondent is giving Rs.13,500 per month under rental scheme and complainants are paying rent of Rs.21,000/- per month till actual legal possession.

2.5.3 To pay Litigation charges of Rs.40,000/- and mental agony of Rs.20,000/-.

3. Upon notice, respondent appeared through Shri Sanjeev Sharma, Advocate and submitted reply dated 01.02.2024 which is summarized below:-

3.1 It is stated that due to Covid-19 pandemic, this Authority has extended the completion period for six months. Accordingly, the date of possession has also to be extended till 20.09.2022 from 20.03.2022. As per the commitment letter dated 15.09.2020 complainants are being paid Rs.13,500/- as assured rental against the amount paid by complainants and till date a sum of Rs.5,26,500/- approximately has been paid to complainants. It is stressed that if this Authority is allowing payment of interest for

the period of delay in handing over possession, then the amount of Rs.5,26,500/- paid as assured rent needs to be deducted from the awarded interest.

3.2 It is submitted that the total cost of the flat is Rs.50,23,074/- and it is construction linked plan and the delay as stated above is due to Covid-19 pandemic. Complainants have not made payments of tiling work and respondent has to send demand letter/reminder. Respondent admitted payment of Rs.44,77,837/- by complainants.

3.3 Respondent considering the request of complainants to grant higher assured rent, agreed to raise assured rent to Rs.15,000/- per month. To support his case, respondent has attached Annexures R-1 to R-10 with his reply. It is further submitted that the Unit can only be offered for possession after obtaining Occupancy Certificate.

4. Complainants filed rejoinder dated 01.08.2024 to the reply of respondent contending that as per letter dated 15.09.2020 respondent was to pay monthly rent of Rs.13,500/- till offer of possession. However, the same is not being paid since April 2024. Delay in handing over possession is causing financial hardship to complainants.

5. The undersigned heard arguments of both the counsels on the stipulated date.

6. It is argued that complainants purchased Unit K-302 in 'Sushma Crescent Phase 2' on 18.09.2020 and possession was to be handed over on 20.03.2022. Sufficient time has elapsed but possession has not been handed over to them by respondent. It is argued that complainants are paying rent of Rs.21,000/- per month and also paying EMI of Rs.20,500 every month towards home loan. It is further argued that respondent be directed to pay

interest with effect from 20.03.2022; and to pay difference of Rs.7,500/- per month.

7. On the other hand, it is argued by respondent that due to Covid-19 delay occurred in handing over possession to complainants. Respondent is paying monthly assured rent to complainants and till date respondent had paid Rs.5,26,500/- and if this Authority is considering to award interest for the period of delay, then this amount of Rs.5,26,500/- be deducted from the due interest to be awarded in favour of complainants. It is also argued that interest for the period of Covid-19 be waived off in the interest of natural justice.

8. The undersigned considered the rival contentions of the parties and also perused the available record.

9. From the above pleadings, the main dispute is qua delivery of valid possession of the Unit and also payment of interest at SBI's MCLR rate for the period of delay in handing over possession of said unit.

10. It is admitted case of respondent that the total sale consideration of the Unit is Rs.50,23,074/- and complainants had already paid a sum of Rs.44,77,837/- and respondent had also paid Rs.5,26,500/- approximately as assured rent. In the last para no.13 of the reply dated 01.02.2024 the respondent admitted *"That unit as well as project is under construction and possession can only be offered after completion of unit and receipt of occupation certificate and not prior to that."*

11. Thus, it is admitted that the Unit of complainants as well as the project is under construction. Even on the date of arguments, i.e on 03.07.2025 Counsel for respondent has not produced any completion/occupancy certificate of this project/unit. Clause 7 of the agreement for sale dated 18.09.2020 relating to possession of the Unit is reproduced below:-

"7. POSSESSION OF THE APARTMENT / UNIT.

7.1 Schedule for possession of the said Unit- *The Promoter agrees and understands that timely delivery of possession of the unit is the essence of the Agreement. The Promoter,*

based on the approved plans and specifications, assures to hand over possession of the Unit on 20.03.2022 unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented."....

12. From the above discussion, it is established on record that there is delay on the part of respondent in handing over valid possession of the Unit to complainants and as per the provisions of Section 18(1) of the Act of 2016, complainants are entitled for payment of interest for the period of delay.

13. Respondent stated that due to spread of Covid-19, from March, 2020 onwards the Ministry of Housing and Urban Affairs also recommended for extension of registration of real estate projects due to 'Force Majeure'. It is further submitted that pursuant thereto, this Authority has also extended the period due to Covid-19 by six months.

14. However, it is a matter of record that agreement for sale was executed between the parties on 18.09.2020 and as per this agreement possession was to be handed over on 20.03.2022. It is the established case of complainants that they had made following payments during the period September and October 2020:-

Sr.No	Receipt No.	Date	Amount In Rs.
1	6923	16.10.2020	19,64,000
2	6925	16.10.2020	9,00,714
3	6903	05.10.2020	5,00,000

4	6823	14.09.2020	1,49,000
5	6822	14.09.2020	2,00,000
6	6824	10.09.2020	50,000
7	6815	06.09.2020	50,000
	Total Rs.		38,13,714

15. Counsel for complainants has placed on file a copy of order passed by this Bench in "*Renu Chaudhary and Anr Vs. Sushma Buildtech Limited and ors.*" (Complaint No. 0519 of 2022) in support of his case and drew attention its para no.13 which is reproduced below:-

"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".

16. The impact of Covid-19 was after 20th March 2020. From the above it is clear that the agreement was executed on 18.09.2020 and payments were also received by respondent from complainants on September and October 2020 i.e during the impact of Covid-19 pandemic. Thus, it is held that the date of delivery of possession is 20.03.2022 and complainants are entitled for payment of interest with effect from 20.03.2022 till the valid delivery of possession of the unit.

17. As a result of the above discussion, this complaint is accordingly allowed and respondent is directed

17.1 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 20.03.2022 till the date of this order and in the first instance, the arrear of interest 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.

17.2 Respondent is further 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 complainants from the date of this order till the date of delivery of legal valid possession of the Unit No. 302 on 3rd Floor of the project namely "Sushma Crescent Phase-2" being developed by respondent at Zirakpur, Punjab and submit the compliance report.

17.3 It is further made clear that the amount of Rs.5,26,500/- paid by respondent to complainants towards 'assured rent' be set off from the awarded interest.

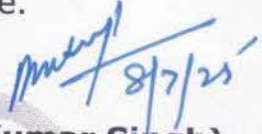
18. It may be noteworthy that in case compliance report is not submitted by respondent after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act of 2016.

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

20. Further, 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".

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


(Binod Kumar Singh)
Member, RERA, Punjab