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.

Phone No. 0172-5139800, email id: pschairrera@punjab.gov.in&pachairrera@punjab.gov.in

1.	Complaint No.	GC No. 0281/2023
2.	Name & Address of the complainant (s)/ Allottee	Ridhin Sharma r/o Flat No. 9, 2nd Floor, Green City, Green Aptt., Dhakoli, Zirakpur, SAS Nagar (Mohali), Punjab - 140603
3.	Name & Address of the respondent (s)/ Promoter	M/s. Sushma Buildtech Ltd., Elante Mall, Unit B-107, Business Complex, 1st Floor, Industrial Area, Phase-1, Chandigarh - 160002
4.	Date of filing of complaint	09.08.2023
5.	Name of the Project	Sushma Crescent, Phase-II, Dhakoli, Zirakpur
6.	RERA Registration No.	PBRERA-SAS79-PR0084
7.	Name of Counsel for the complainant, if any.	Complainant in person alongwith Sh. R.K. Sharma, Father of the complainant.
8.	Name of Counsel for the respondents, if any.	Sh. Vishal Singhal, Counsel for the respondents
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	10.11.2025

Order u/s. 31 read with Section 40(1) of Real Estate (Regulation & Development) Act, 2016 r/w Rules 16, 24 and 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017

The present complaint dated 09.08.2023 has been filed by Sh. Ridhin Sharma (hereinafter referred as the complainant for the sake of convenience and brevity) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the RERD Act, 2016) read with Rule 36 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as the Rules) before the Real Estate Regulatory Authority, Punjab (hereinafter referred as the Authority) seeking refund of the amount deposited along with interest. The complaint pertains to a RERA registered project namely Sushma Crescent, Phase-II, Dhakoli, Zirakpur, District SAS Nagar (Mohali) being developed and promoted by M/s Sushma Buildtech Ltd. (hereinafter referred as the respondent for the sake of convenience and brevity)

2. It is pertinent to note that at the time of filing of the complaint, the complainant had initially prayed for possession of the allotted unit along with interest for the delayed period, but subsequently modified his prayer to seek refund of the amount deposited along with interest. For ready reference, the request of change of prayer is attached herewith:-

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To

The Chairperson
RERA – CHD.

Subject:– Refund of Amount with Nominal Intt.

Sir,

I honour to say that I have filed a case against Sushma Buildtech. Ltd. complaint No. GCNo 0281/2023 on dated 9th Aug-2023.

In this case I want to say that the Amount which I have given to them for Book a flat in Sushma Cresent N-402. I may kindly be refund with Nominal Interst Rate as per schedule as soon as posible

Thanking you.

Dated
26/5/2025

Your's Sincerely
RIDHIN SHARMA
C/O (R.K. SHARMA)
Mob. No 94164-54055

3. The brief gist of the complaint as alleged by complainant is that that he was allotted Flat No. 402, Tower–N in the above-mentioned project by the respondent company. In order to finance the said unit, the complainant approached Indian Overseas Bank for a housing loan. The bank, after scrutiny, approved his loan application and proceeded to verify the property through its empanelled advocate. However, during the verification process, it was discovered that the said flat had been mortgaged by the respondent company to the Municipal Council, Zirakpur.As a result, Indian Overseas Bank, vide its letter dated 20.05.2022, imposed a condition that the respondent must first obtain a No Objection Certificate (NOC) from the Municipal Council, Zirakpur before the loan amount could be disbursed. The complainant contended that despite repeated requests, the respondent failed to procure the said NOC. He further submitted that the respondent had committed to deliver possession of the flat by 30.06.2023, but till date, neither the NOC has been obtained nor possession handed over.The complainant asserted that the act of the respondent in selling a mortgaged flat amounts to gross deficiency

in service and unfair trade practice, as the promoter had no legal right to sell the said unit without first clearing the mortgage or obtaining the necessary release/NOC from the concerned authority. Due to this default, the complainant has been unable to avail his sanctioned home loan and continues to suffer both financially and mentally.The complainant has, therefore, prayed that this Authority may direct the respondent to refund the entire amount deposited by him along with interest as per the provisions of the RERD Act, 2016 and the Rules framed thereunder.

4. The respondent, through their written statement, denied all allegations made by the complainant. The respondent contended that the complainant had paid only Rs. 5,30,327/- out of the total sale price of Rs. 59,72,776/-, and therefore, could not claim possession without paying the balance amount. The respondent submitted that the complainant had opted for a construction-linked payment plan and had defaulted in paying amounts as per the agreed schedule.The respondent further stated that the mortgage of the flat was inadvertent, caused due to a new employee failing to check the inventory, and assured that steps had been initiated to release the mortgage from the Municipal Council, Zirakpur. It was submitted that possession could be offered only after the lien was removed and the balance consideration was paid. The respondent also contended that the complaint was not maintainable as the project was registered with RERA and partial completion certificates had been obtained. The respondent asserted that there was no deficiency in service and that the complainant's prayer for possession was premature.

5. In response to the reply, the complainant denied that he had failed to inform the respondent about the requirement of a home loan. He submitted that he had clearly communicated his need for a loan before executing the sale agreement and had been assured by the respondent that the flat was free from encumbrances. The complainant reiterated that the respondent's failure to provide the necessary NOC was the sole reason he could not obtain the bank loan and pay the remaining consideration. It was contended that the respondent had misled him into making the initial payment and had pressured him to pay further amounts despite the mortgage. The complainant denied that the complaint was frivolous or an abuse of the process

of law and maintained that he was entitled to refund with interest due to deficiency in service.

6. The parties have agreed on certain facts, which are not in dispute:

i. The complainant was allotted Flat No. 402, Tower–N in Sushma Crescent, Phase-II.
ii. The complainant paid an initial amount of Rs.5,30,327/-.
iii. The sale agreement dated 09.05.2022 was executed between the parties.
iv. The flat was mortgaged with the Municipal Council, Zirakpur, at the time of allotment.
v. The respondent has initiated steps to remove the mortgage/lien.

7. It is noted that the complainant initially prayed for possession of the flat along with interest for the period of delay, but later modified his prayer to seek refund of the amount deposited along with interest, to which respondent has no objection. This modification is acknowledged by the Authority and forms the basis of the present proceedings.

8. The complainant argued that the respondent misrepresented the status of the flat as free from encumbrances and, therefore, he made the initial payment in reliance on such assurance. He further contended that the respondent's failure to provide the NOC from the Municipal Council prevented him from obtaining a home loan and paying the remaining consideration.

9. The respondent argued that the complainant had paid less than 10% of the total sale price and could not claim possession without completing payments. They further contended that the mortgage of the flat was inadvertent and that the complainant's request for possession was premature. The respondent also submitted that the project was registered with RERA, partial completion certificates had been obtained, and possession could be offered within the timeline granted by the Authority.

10. After considering the pleadings, written statements, rejoinders, and documents filed by both parties, this Bench observes as follows:

i. The sale agreement clearly stipulated that the promoter shall not mortgage the flat and any mortgage shall not affect the allottee's rights. The flat in question was mortgaged at the time of allotment, which prevented the complainant from availing a home loan.

ii. The complainant paid an initial amount in good faith relying on the assurances of the respondent that the flat was free from encumbrances. The respondent failed to provide the necessary NOC from the Municipal Council, Zirakpur, despite repeated requests.

iii. The respondent's plea that the complainant could not claim possession without paying the balance sale consideration is not acceptable in the present circumstances. The complainant was unable to pay the balance amount due to the respondent's failure to remove the mortgage.

iv. This bench notes that the mortgage was acknowledged by the respondent and steps have been initiated to remove it. However, the delay and deficiency in service caused by the respondent has led to a situation where the complainant is entitled to **refund of the amount already paid along with interest**.

v. The arguments regarding project registration, partial completion certificates, and timelines for completion granted by RERA do not absolve the respondent from the responsibility to refund amounts where the purchaser is prevented from paying the balance consideration due to the promoter's deficiency in service.

11. In view of the foregoing discussion and the material on record, the Authority finds merit in the complaint filed by Sh. Ridhin Sharma. The respondent, M/s Sushma Buildtech Ltd., is directed to refund the amount of Rs. 5,30,327/- paid by the complainant along with interest @ 10.85% (i.e. 8.85% SBI's Highest MCLR Rate applicable as on 15.09.2025 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The interest is being calculated on monthly basis for the whole month as a unit for the purpose of charging interest. 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 refunds and interest upto 31.10.2025 is calculated as follows:-

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Date of payment	Interest payable from	Principal Amount	Interest calculated till	Rate of Interest as on 15.09.2025	No. of months	Interest Per Month	Interest Amount
20.04.2022	01.05.2022	1,00,000/-	31-10-2025	10.85%	42 Months	4,795/-	2,01,392/-
02.05.2022	01-05-2022	4,30,327/-	31-10-2025	10.85%			
		5,30,327/-					
	GRAND TOTAL (Rs.5,30,327/- Principal Amount and Rs.2,01,392/- towards its interest)						**7,31,719/-**

12. The Hon'ble Supreme Court, in its judgment in the matter of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Others* **(Civil Appeal Nos. 6745-6749 of 2021),** has upheld that the refund to be granted u/s. 18 read with Section 40(1) of the Real Estate (Regulation & Development) Act, 2016 is to be recovered as Land Revenue alongwith interest and/or penalty and/or compensation.

13. In view of the aforesaid legal provisions and judicial pronouncement, it is hereby directed that the refund amount along with the accrued interest shall be recovered as Land Revenue. Further, the Principal Amount is determined at Rs.5,30,327/- and interest of Rs.2,01,392/- by applying the rate of interest @ 10.85% (i.e. 8.85% SBI's Highest MCLR Rate applicable as on 15.09.2025 + 2%) u/s 18 of the RERD Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. Hence, the promoter is liable to pay a total amount of Rs.7,31,719/- upto 31.10.2025 (i.e. Principal amount of Rs.5,30,327/- and interest of Rs.2,01,392/-), and any amount due as interest w.e.f. 01.11.2025 of Rs.4,795/- per month onwards on the principal of Rs.5,30,327/- till it is paid. Any amount paid by the promoter first will be considered as payment against the interest whatever is due. After payment of whole of interest only then the payment will be considered against principal and accordingly the principal will be reduced and interest will be charged on the balance/reduced principal amount till the whole principal amount is fully paid. Even any payment after reduction in principal amount will be first considered towards interest payment which has become due on the reduced principal, if any.

14. **Further, <u>under the provisions of sub-section(1) of section 38 of the RERD Act, 2016; the promoter is hereby directed not to allot, book, sellor give possession to any third party of the unit/property which was allocated to</u>**

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<u>the complainant(s)</u> till all the payments payable to the complainant of Rs.7,31,719/- upto 31.10.2025 (i.e. principal amount of Rs.5,30,327/-and interest of Rs.2,01,392/-) and subsequent interest amount of Rs.4,795/- per month w.e.f. 01.11.2025, if any becoming due is not fully paid to the complainant. The complainant will have its continuous lien over the said unit till the refund alongwith interest is not fully paid by the promoter to the complainant as determined in this order and/or mentioned in the **<u>Decree Certificate</u>.** The promoter is free to sell the unit in question after duly obtaining the receipt of the due payment from complainant as per this order.

15. The amount of amount of Rs.7,31,719/- upto 31.10.2025 (i.e. principal amount of Rs.5,30,327/- and interest of Rs.2,01,392/-), as determined vide this order u/s. 31 of the Real Estate (Regulation & Development) Act, 2016; has become payable by the respondent to the complainant and the respondent is directed to make the payment within 90 days from the date of receipt of this order as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 read with Rules 17 of the Punjab Real Estate (Regulation & Development) Rules, 2017. The amount of Rs.7,31,719/- determined as refund and interest amount thereon upto 31.10.2025 and further a sum of Rs.4,795/- to be payable as interest per month from 01.11.2025 is held **"Land Revenue" under the provisions of Section 40(1) of the RERD Act, 2016. The said amounts are to be collected as Land Revenue by the Competent Authorities as provided/authorised in the Punjab Land Revenue Act, 1887 read with section 40(1) of the Real Estate (Regulation and Development) Act, 2016.**

16. **The Secretary of this Authority is hereby directed to issue a <u>"Debt Recovery Certificate"</u> immediately and send the same to the Competent/ jurisdictional Authority as mentioned in the Punjab Land Revenue Act, 1887 after 90 days of the issuance of this order to be recovered as arrears of <u>"Land Revenue".</u>** The complainant & the respondent are directed to inform the Secretary of this Authority regarding any payment received or paid respectively so as to take the same in to account before sending "Debt Recovery Certificate" to the Competent

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Authority for recovery. **Further, Sh. Ridhin Sharma is held to be <u>Decree Holder</u> and the Respondent i.e. <u>M/s. Sushma Buildtech Ltd. as judgment debtor for the purposes of recovery under this order.</u>**

17. No other relief is made out.

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

Chandigarh
Dated: 10.11.2025

(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. Ridhin Sharma r/o Flat No. 9, 2nd Floor, Green City, Green Aptt., Dhakoli, Zirakpur, SAS Nagar (Mohali), Punjab - 140603
2. M/s. Sushma Buildtech Ltd., Elante Mall, Unit B-107, Business Complex, 1st Floor, Industrial Area, Phase-1, Chandigarh - 160002
3. The Secretary, RERA, Punjab.
4. Director (Legal), RERA, Punjab.
5. The Complaint File.
6. The Master File.

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