

**BEFORE Sh. ARUNVIR VASHISTA, Member-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT
CHANDIGARH**

Complaint No. RERA/ GC No.0373 of 2023

Date of filing: 16.10.2023

Dated of Decision: **29.08.2025**

1. Kshitij Panghaal

2. Indu Panghaal

Both residents of 49, Sector 13 Part 2 Hisar, Haryana.

...Complainants

Versus

Suksha Developers Pvt. Ltd. (through its Director Mr. Binder Pal Mittal), B-107, First Floor, Business Complex at Elante Mall, Industrial Area Phase-1 Chandigarh.

... Respondent

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Sh. Rose Gupta, Advocate representative for the complainants
Sh. Sanjeev Sharma, Advocate, representative for the respondent

ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules) against the respondent.

2. The gist of the complaint is that the complainants applied for allotment of residential unit No. R4-035/2, situated in the housing project Sushma Valencia, located at village Nagla, M.C. Zirakpur, District SAS Nagar, (Mohali), vide application dated 16.07.2019. Based on the application, the said unit was allotted to the complainants vide

an allotment letter dated 05.08.2019. The total sale consideration of the unit was Rs.80,38,372/-. An "Agreement for Sale" dated 02.08.2019 was also executed *inter-parties*, which adhered to the model agreement prescribed under the Real Estate (Regulation and Development) Act, 2016. As per Clause 7.1 of the Agreement, the possession of the aforementioned unit was to be delivered by 01.05.2022. Despite repeated follow-ups and personal meetings with the respondent's representatives, the possession remained undelivered. Furthermore, the respondent had arbitrarily imposed penalty charges @ 24% as interest on the outstanding amount, alleging delay on the part of the complainant. However, as per the terms of the agreement, such penalty was applicable only after completion of plastering works, which was admittedly not commenced as yet. As such the complainants seek interest on the paid amount for each month on account of delay in handing over possession. Hence, the present complaint.

3. Upon notice, respondent promoter filed written reply contesting the complaint. Respondent emphatically denied the complainant's allegations regarding delay in possession submitting that agreement for sale comprehensively outlined the mutual rights and obligations of the parties, ensuring compliance with statutory requirements. As per clause 7.1 of the said agreement, the possession of the unit in question was to be delivered by 01.05.2022, subject to *force majeure* conditions as explicitly defined therein. Those *force majeure* conditions account for unforeseeable circumstances beyond the control of the developer, which could delay the delivery timeline. The complainant's claim that the respondent failed to deliver

possession of the unit in accordance with clause 7.1 of the buyer's agreement dated 02.08.2019 was factually incorrect and lacks legal basis. While the anticipated date for possession was 01.05.2022, any delay was directly attributable to unforeseen circumstances beyond the respondent's control, including delay in obtaining essential regulatory approvals and, most significantly, *force majeure* conditions caused by COVID-19 pandemic. It was further submitted that complainants were duly offered possession of their unit through an offer of possession letter dated 01.03.2024 followed by subsequent reminder letters, urging them to take physical possession but despite multiple reminders, the complainants did not come forward to take possession of their allotted residential unit as per the terms of the agreement for sale. It was further averred that the present complaint was an abuse of the process of law. Denying the rest of the averments of the complaint a prayer was made for dismissal of the complaint.

4. Learned counsel for the complainants pointed out that as per Clause 7.1 of the Agreement for sale, the possession of the unit in question was to be delivered by 01.05.2022. The grace period of 6 months was to be allowed only in the case of '*force majeure*'. No situation of *force majeure* had been pointed out and as such possession should have been delivered by 01.05.2022. Hence, the respondent was liable to pay interest for the period of delay.

5. On the other hand, learned counsel for respondent reiterated the legal contentions noted above. He further contended that even as per agreement for sale dated 02.08.2019 the possession was to be offered by 01.05.2022 subject to various force majeure conditions

and the same was duly offered through an offer of possession letter dated 01.03.2024 but despite issuance of several reminder letters to the complainants for the said purpose they did not come forward to take possession of their allotted unit. As such complainants cannot claim that there was any delay in delivery of possession. At the best the complainants could have sought refund of the money paid by them but this course of action had not been adopted and the payment of interest therefore was not warranted in law.

6. This authority has carefully considered the rival contentions of both the parties and perused the record of the case.

7. Certain facts are undisputed between the parties that complainants booked flat in question in the project of the respondent. An agreement for sale dated 02.08.2019 was also executed between the parties. The total sale consideration of the apartment was Rs.80,38,372/-. As per clause 7.1 of the agreement the due date for handing over possession of the unit in question was 01.05.2022. Complainants had been asking for the delivery of possession of the unit but the project was incomplete till date and no occupation certificate/ completion certificate had been obtained by the respondent from the competent authority. As has been categorically observed by the Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, Civil Appeal Nos.2809-2810 of 2024 decided on 6 September, 2024** that in the absence of requisite completion certificate the offer of possession even if made is not valid one. In the case in hand, no completion certificate was of course there with the promoter. As such even if any offer allegedly made by the respondents for delivery of possession in an incomplete project was

not a valid offer as has been observed by Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, (Supra)**.

8. As a result of the above discussion this complaint is partly accepted and the respondent is directed to pay interest on the amount paid by the complainants to the respondent at the prescribed rate as per Rule 16 of the RERD Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the date of payment till a valid offer of possession is made by the respondent. File be consigned to record room after due compliance.

Announced: 29.08.2025


(Arunvir Vashista),
Member, RERA, Punjab