

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

Complaint No. 0027 of 2021
Date of Institution: 21.01.2021
Date of Decision: 20.03.2026

Mr. Rajiv Sharma and

Sh Neeraj Sharma

Both at residents of H.No. 951, Sector 21, Panchkula, Haryana-
134112

...Complainant

Versus

Sushma Buildtech Limited, SCO 172-173, First Floor, Sector 9C,
Chandigarh-160017

...Respondent

Present: Ms Manisha Maggu, 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 21.01.2021 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 Mrs. Santosh Sharma, Mr. Rajiv Sharma & Mrs. Neeraj Sharma resident of 951, Sector 21, Panchkula, Haryana applied for residential apartment vide application dated 16-8-2014. They were allotted

an Apartment no. C- 901, Tower C measuring super area of 1650 sq. ft. for basic sale price of Rs. 55,90,000 in residential complex to be known as "Sushma Chandigarh Grande" by Sushma Buildtech Limited located at village Bishangarh, M.C. Zirakpur, Dist. SAS Nagar (Mohali). The application money of Rs.6 Lakhs was paid by the complainants. A copy of the Allotment letter along with the payment receipt is annexed herewith as Annexure C-1.

2.2 The complainants made a total payment of Rs. 56,08,552/- up to February 2021. A copy of payment receipts is annexed herewith as Annexure C-2

2.3 On 30-01-2015 Apartment Buyer's Agreement was signed between the complainants and respondent. As per clause 14 of the agreement the possession of the unit shall be handed over within a period of 34 months from the date of the execution of the agreement. The date of possession as per the agreement comes to 30-11-2017. Thereafter on 27-02-2015 a tripartite agreement was executed between the complainants and the respondent. A copy of the buyer's agreement and tripartite agreement is annexed herewith as Annexure C-3 and Annexure C-4.

2.4 One of the applicants namely Smt. Santosh Sharma died on 22-11-2019 and e-mail was sent by the complainants to the respondent for deletion of the name on 22-12-2020. The legal heirs of the deceased Santosh Sharma have tendered affidavit by assigning the rights of their share out of love and affection to their brother Sh. Rajeev Sharma who is a complainant in the present case. A copy of affidavits is annexed herewith as Annexure C-5. In view of the death of the one of the allottee on 22.11.2019 and non-submission of the succession certificate or decree in the favour of the complainants to establish their legal right, the matter was adjourned sine die with the liberty to the complainants to get this revived as and when any succession certificate

or any other legal document is obtained by them. Therefore, matter was adjourned sine die on 15.02.2022.

2.5 Vide hearing dated 14.08.2025, registry was directed to issue notice to the respondent as application dated 17.07.2025 has been received from the complainants for revival of the complaint no. 0027 of 2021.

2.6 The respondent issued offer of possession on 03.05.2021 much after a delay of 3.5 years from the actual date of possession which was 30.11.2017. The respondent has nowhere mentioned regarding the payment of interest in offering the delayed possession. The offer of possession issued by the respondent was also without any OC/CC. A copy of offer of possession letter along with possession demand is annexed herewith as Annexure C-6. Later on, possession of the unit has been handed over to the Sh Rajiv Sharma and Mrs Neeraj Sharma on 07.08.2023.

3. Prayer of complainants is that the respondents be directed to handover the possession of the unit after obtaining valid Occupancy Certificate/Claimant Company and respondent be directed to pay the interest as per the provision of act for the delay caused till valid handing over the possession of unit.

4. Upon notice, respondent appeared through Shri Sanjeev Sharma, Advocate and submitted reply dated 28.10.2021 which is summarized below: -

4.1 The respondent company is developing the project and has already completed the construction of four towers i.e. Tower E, F, G and Tower H of the Project i.e. Sushma Chandigarh Grande. The Applicants themselves stated that they had executed an Apartment Buyers Agreement dated 30-01-2015, possession of the unit was to be handed over within 40 months (34+6 months) as the buyer agreement provides the possession within 40 months i.e. by 31.05.2018 subject to force majeure conditions and as Covid-19 is force majeure event so delay due to Covid-19 is to be excluded and possession date is to be extended by 9 months i.e. 23.03.2024. That

Hon'ble SCDRC Chandigarh has also accepted the Notification issued by government of India declaring Covid-19 as Force Majeure and agreed to extension of 9 months to date of possession due to timeline granted in agreement, due to force majeure event of Covid-19.

4.2 One of the allottee, Santosh Sharma, has expired and present complainants have filed the complaint without impleading all the legal heirs of the deceased. No succession certificate or will has been placed on record to prove that the allottees are competent to maintain and file the complaint without getting a succession certificate or will in favour of the present complainants. The present complainant deserves to be dismissed on this ground alone being not maintainable in the present form.

4.3 After slowdown of covid impact, the respondent company has expedited the development and completed the project, wherein the tower of complainants is situated, and the completion/occupation certificate has already been applied for and once the occupation certificate/completion certificate is granted by competent authority, possession of the complainant's unit be offered and handed over to them. Copy of application for grant of completion certificate is annexed as Annexure R-2 (Colly). The copy of agreement of unit no C-901 dated 30.01.2015 is annexed as Annexure R-3. The basic sale price of unit was Rs 55,90,000/ and the complainant is liable to pay the taxes as levied by government on the applicable price of unit, PLC, FPC as stipulated in clause 2 of buyer agreement as well as IFMS charge, stamp duty and other charges as specified in clause 7.5. of agreement.

4.4 The counsel of the respondent has reproduced various provisions of the RERA Act, the same is no reproduced for sake of brevity. The respondent argued that the agreement that has been referred to, is the Apartment Buyer Agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complain for interest and compensation has to be in reference to the Agreement for sale executed in terms of 2016 Act and 2017

Punjab Rules and no other Agreement. Thus, in view of this fact, no relief as claimed by complainant can be granted.

4.5 The respondent pointed out that as per the Clause. 21 of Apartment-Buyer's Agreement, in the event of a dispute between the parties that is not resolved between them, the dispute shall be referred for Arbitration to be conducted by the two Arbitrator as appointed by each of the parties along with third Arbitrator, who would be selected by two arbitrators. In view of this provision as per agreed terms and conditions of the buyer agreement executed between the parties, the Complaint by the applicants is unsustainable and is required to be dismissed on this ground.

4.6 The respondent vide written submission dated 28.10.2021 stated that as per the declaration and the affidavit submitted in compliance of Section 4(2)(I)(C) of 2016 Act in Form B, the completion time of the project has been declared to be "July, 2022". It is submitted that the project namely "Sushma Chandigarh Grande" got registered on 14.11.2017 vide Memo No. RERA/2017/347-348. Thus, as on date i.e. date of filling of complaint, the complainants have no cause of action to file the instant complaint under Real Estate (Regulation & Development) Act, 2016 read with the Punjab State Real Estate (Regulation & Development) Rules, 2017.

4.7 The respondents argued that Sub-Section 3 of Section 19 provides that the Allottee shall be entitled to claim the possession of the apartment, plot or building, as the case may be, as per the declaration given by the Promoter under Sub-Clause (C) of Clause (I) of Sub-Section 2 of Section 4. Thus, the entitlement to claim the possession alongwith interest would only arise once the possession has not been handed over as per the declaration given by the Promoter under Sub Cause (C) of Cause (I) of Sub-Section 2 of Section 4. Thus, as per section 19(3), the Complainant is not legally entitled to claim possession till July, 2022. Consequently, the complaint under RERA to seek delivery of possession would arise only after July, 2022.

4.8 As the complainant is seeking interest for the delay in offer of possession, as per the agreed terms and conditions of the buyer agreement so the interest for delay, if any, for the period of delay has to be awarded in consonance of the agreed terms and conditions only. The applicants/complainants cannot act in an arbitrary manner and indulge in pick and choose manner. The respondent also stated that it does not lie in the mouth of complainants to say that they want possession as per terms and conditions of buyer agreement, but for delay in offer of possession, they are entitled to seek compensation by way of interest as per their own whims and fancies and in contravention to the agreed terms and conditions of the buyer agreement. The applicant/complainant can only seek delayed compensation as per agreed terms and conditions of the buyer agreement and in case they are entitled to receive delayed compensation as per agreed terms and conditions of the agreement as per clause 14(d) of the agreement which says that in case of delay in possession beyond the agreed date after 40 months, the respondent were liable to pay a sum of Rs.5/- per Sq Ft of super built up area per month for entire period of such delay.

4.9 Vide application dated 17.07.2025. complainants have revived the complaint no. 0027 of 2021 and submitted the legal heir certificate along with relinquishment affidavits of legal heirs-Anju Prabhaker, Manju Sharma and Poonam Sanger. On perusal of the legal heir certificate issued by Tehsildar, Panchkula, it's noticed that Anju Prabhakar Daughter, Manju Sharma Daughter, Rajiv Sharma Son and Poonam Sanger daughter are legal heirs of Smt Santosh Sharma W/o Sh Sukhdev Raj Sharma.

5. Both the Counsel for the complainant as well as respondent addressed their respective arguments on 26.02.2026.

6. Learned Counsel for the complainants argued that they were allotted a residential Unit No. C-901, Tower 'C' having total area of 1650 Sq Ft vide Allotment letter dated 22.10.2014 in the project "Sushma Chandigarh Grande " by respondent. Thereafter, an agreement was also entered into between the parties on 30.05.2015 and as per Clause 14 of the said Agreement, possession

was to be delivered on 30.05.2018, but the respondent failed to do so. The complainants have paid Rs.52,95,552/- against the agreed price of Rs.55,90,000/-. Thus, failure to hand over possession on time by respondent, the complainant is entitled for interest for the period of delay as per Section 18 of the Act of 2016.

6.1 Counsel for respondent while reiterating the contents of his reply dated 28.10.2021 to justify the delay in delivery of possession stated that Sub-Section 3 of Section 19 provides that the Allottee shall be entitled to claim the possession of the apartment, plot or building, as the case may be, as per the declaration given by the Promoter under Sub-Clause (C) of Clause (I) of Sub-Section 2 of Section 4. Thus, the entitlement to claim the possession alongwith interest would only arise once the possession has not been handed over as per the declaration given by the Promoter under Sub Cause (C) of Cause (I) of Sub-Section 2 of Section 4. Thus, as per section 19(3), the Complainant is not legally entitled to claim possession till July, 2022. The respondent vide letter dated 03.05.2021 (Annexure VI of complainant) made an offer of possession of the unit to complainants along with demand of maintenance charges. It was requested in this offer that the complainants should take possession of the unit by 03.06.2021 failing which holding charges @ Rs.5/- per Sq ft will be levied till actual possession of the unit.

7. The undersigned considered the rival contentions of both the parties and also perused the pleadings along with documents annexed by both the parties:

7.1 There is no dispute about the issuance of allotment letter, entering into agreement by the complainants with respondents no.1, receipt of payment by respondent and as per Clause 14 of the agreement the date of possession is 30.05.2018. From the record available it is evident that the complainants have not taken possession of the unit as per offer dated

03.05.2021. It is also evident that the respondent was not having OC/CC at the juncture when the said possession offer was extended. During the proceeding it was found that the complainants has taken possession of the unit on 07.08.2023. The plea of the respondent that as per the declaration given by the Promoter under Sub Cause (C) of Cause (I) of Sub-Section 2 of Section 4 the possession date will be July, 2022 is not acceptable, whereas as per para 14 of the agreement dated 30.01.2015 the date of possession is clearly mentioned as 30.05.2018. Thus, it is held that the complainant is entitled for interest to be paid by respondent for the period of delay in handing over possession of the above said Unit. The complainants have submitted the legal heir certificate. On perusal of the legal heir certificate issued by Tehsildar, Panchkula it's noticed that Anju Prabhakar Daughter, Manju Sharma Daughter, Rajiv Sharma Son and Poonam Sanger daughter are legal heirs of Smt Santosh Sharma W/o Sh Sukhdev Raj Sharma.

7.2 As per the certificate of possession, possession of the residential unit C-901, Tower 'C' in residential complex to be known as "Sushma Chandigarh Grande" has been taken by the complainants on 07.08.2023.

8. As a result of the above discussion, this complaint is accordingly accepted. The undersigned is of the considered view that complainant is entitled for the receipt of interest from the respondent for the period of delay in handing over possession of the above said unit as provided in section 18(1) of the Act.

Provisions of the Section 18(1) of the Act is reproduced 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:

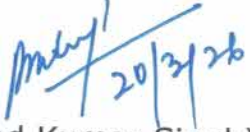
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

9. As a net result of the above discussion, this complaint is accordingly allowed and respondents are directed to:

9.1 To pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate i.e. 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs.52,95,552/- paid by complainant, with effect from 30.05.2018 till actual date of possession i.e.06.08.2023 within ninety days from the date of receipt of this order and submit a compliance report to this Authority about releasing the interest amount as directed. Further, in respect of share of the Smt Santosh Sharma, the interest amount should be given equally to all legal heirs of the deceased (Smt Santosh Sharma).

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

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


(Binod Kumar Singh)
Member, RERA, Punjab