

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

Complaint No.0049 of 2024
Date of Institution: 31.01.024
Date of Decision: 09.01.2026

1. Raman Kapoor
2. Meenu Kapoor

Both residents of Flat No.85, 3rd Floor, Tower-E, VIP Road, Orbit Apartments, Zirakpur, Sahibzada Ajit Singh Nagar, Mohali, Punjab, Pin Code 140603

....Complainants

Versus

1. M/s SBL Builders (P) Limited, SCO No.59, Top Floor, Sector 32-C, Chandigarh, Pin Code 160032
2. Anuj Mahendru, SCO No.59, Top Floor, Sector 32-C, Chandigarh, Pin Code 160032

....Respondents

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Registration No.PBRERA-SAS79-PR0082)

Present: Shri Ravinder Rana, Advocate, Shri Hardeep Saini, Advocate and Ms. Shilpi Rana, Advocate for the complainants
Shri Sanjeev Sharma, Advocate and Shri Vishal Singal, Advocate for respondent No.1
None for respondent no.2

The relief sought by the complainants through this complaint is for issuance of directions to respondents to refund the amount Rs.47,71,663/- along with interest thereon till the date of realization of the payment.

2. The brief facts of the complaint are summarized below:-

2.1 It is averred that on submitting an application by complainants on 07.05.2017 for a 3-BHK large apartment, they were allotted Apartment No.B-306, Tower-B, 3rd Floor,

with Super/Carpet area of 1650 Sq.Ft, Category/Type, in Tower No.B, vide allotment letter dated 26.05.2017 in the residential project 'SUSHMA GRANDE NXT', situated at Village Gazipur, Zirakpur, District SAS Nagar (Mohali). The total sale price of the said Apartment was Rs.58,09,095/-, including Basic Sale Price, PLC, FPC, Club Membership Charges, Basement Car Parking Charges and Power Back-Up Charges.

- 2.2 It is further submitted that a Unit Buyer Agreement was executed on 26.05.2017 between respondent No.1 through Respondent No.2 and the Complainants. As per Clause 11.1 of the agreement, possession of the Apartment was to be delivered within 42 months from execution of said Agreement i.e 25.11.2020. However, respondents failed to hand over possession till date with Occupancy/Completion Certificate.
- 2.3 It is also submitted that out of total sale consideration of Rs.58,09,095/- complainants paid Rs.47,71,663/- (almost 80%) till 26.06.2019 after availing housing loan of Rs.47,27,276/-.
- 2.4 Since there was no construction as per payment plan, Complainants stopped further payment. However, it is alleged that complainants have not defaulted earlier in making timely payments. Respondents have breached terms and conditions of Agreement dated 26.05.2017. Complainants admitted that Respondents have made payment towards interest/compensation on account of

delay in possession during the period between October, 2020 to November, 2021. However, complainants are unable to give exact detail of the same at present due to their medical emergencies and their mental state.

- 2.5 Respondents have failed to develop the project in question and even further failed to complete the construction of the Apartment of the complainants' Unit within the stipulated time period noted above.
- 2.6 Complainants requested orally as well as in writing to respondents on 17.08.2023 and 10.10.2023 and explained about their medical conditions since May, 2019, but Respondents kept on dilly-dallying the matter.
- 2.7 In view of above explanation Complainants cannot wait indefinitely for handing over physical possession of their Apartment along with occupancy/completion certificate. Complainants due to their Medical conditions as well as financial hardships decided to get refund of the amount paid to Respondents.
- 2.8 Complainants also served a legal notice on 28.11.2023, but all in vain. Even respondents failed to adhere to the provisions of the Act of 2016. Hence, this complaint seeking relief noted in the initial para of this order.
- 2.9 Complainants have attached a photocopy of allotment letter dated 26.05.2017; Unit Buyer's Agreement dated 26.05.2017; letter dated 17.08.2023 addressed to Shri Bharat Mittal, M/s Sushma Buildtech Limited; letter dated

10.10.2023 addressed to Shri Bharat Mittal, M/s Sushma Buildtech Limited and legal notice dated 28.11.2023 sent through registered post along with its postal receipts, to substantiate their case.

3. Upon notice Shri Sanjeev Sharma, Advocate appeared for respondent no.1 and submitted reply dated 08.01.2025 which is summarized below:-

3.1 It is stated that due to global outbreak of Covid-19 it was difficult for the developers to carry on construction activities. Counsel for the respondent also relied upon Advisory dated 13.05.2020 issued by the Ministry of Housing and Urban Affairs. He also relied upon order dated 10.05.2023 passed in the matter of "*Ramesh Kumar Vs Omaxe*" whereby the Hon'ble State Consumer Dispute Redressal Commission, Chandigarh granted nine months' extension for possession due to *force majeure* conditions. He also cited order of the Hon'ble National Consumer Disputes Redressal Commission, New Delhi passed in "*Kishor V. Patil and Anr. Vs M/s Marvel Zeta Developers Pvt. Ltd. and Anr.*" (Consumer Case No.58 of 2022), wherein it was held that "*opposite parties were entitled to an extension of the period due to force majeure from January 2020 until the offer of possession*".

Counsel for the respondent further relied upon the judgement of the Hon'ble Supreme Court in its *Suo Moto Writ Petition (C) No.3 of 2020* whereby vide its order dated 10.01.2022 made observations regarding the extension of

limitation periods in the light of Covid-19 and stressed that these are applicable to the present case.

3.2 While admitting the purchase by complainants of the Apartment detailed above for a basic sale price of Rs.58,09,095/-, issuance of allotment letter (Annexure R-1) and thereafter execution of Unit Buyer's Agreement dated 26.05.2017 (Annexure R-2), it is stated that complainants agreed to the terms and conditions of the agreement. As per agreement possession was to be delivered within 48 months. It is also stated that Covid-19 caused disruptions across the real estate sector, i.e procurement of materials, shortages of labour etc. and also hindered the timely completion of the project.

3.3 It is also alleged that there was delay in making payments by complainants which also contributed to the overall delay in the project, which is evident from statement of accounts (Annexure R-3). Counsel for the respondent further averred that due to Covid-19 this Authority also extended the completion dates of the registered projects. Thus, the delays are not attributable to respondent no.1. It is further submitted that the statement of accounts (R-3) accurately records all payments received from complainants.

3.4 It is further submitted that respondent no.1 has paid Rs.88,044/- via cheques and benefit of Rs.1,12,940/- was credited to BSP, shown as Frill Adjustment in SOA. In lump sum a total sum of Rs.2,00,984 has been credited to the complainants (Annexure R-4). However, complainants

concealed this fact. It is further stated that in the event of any refund is allowed in favour of complainants, then such refund must be subject to deduction of amounts already paid to complainants along with accrued interest. In support of this contention, Counsel for the respondent has relied upon para 14 of the judgement dated 21.12.2023 (Annexure R-5) whereby the Hon'ble State Consumer Disputes Redressal Commission, U.T. Chandigarh has held that "*the orders of the Id. Lower Commission are modified, and the Appellate/Opposite Party is directed to refund to the respondent/complainant the amount of Rs.21,79,894/- along with interest @ 9% from the respective date(s) of deposit, minus Rs.10,55,090/- already paid towards the assured return along with interest @ 9% from the respective date(s) of receipt till realization.....*"

3.5 It is the prayer of respondent no.1 that in view of the above submissions/legal positions, the complainants are not entitled to any relief.

4. Counsel for the complainants filed rejoinder dated 08.05.2025 reiterating the contents of the complaint and controverted the contents of the reply of respondent no.1. It is sated that complainants deposited Rs.47,71,663/- as per the payment plan and whenever asked by respondents. Respondents acknowledged the amount of Rs.47,71,663/- in their demand letters dated 07.06.2019 and 27.06.2029 respectively (Annexure P-10 and Annexure P-11). It is also submitted that no reply to legal notice dated 28.11.2023 was sent by respondents. However, when the present complaint was filed before

this Authority, respondent issued letters dated 23.06.2024 and 06.08.2024 (Annexure P-7 and Annexure P-8) demanding amount after five years, just to harass complainants. It is further submitted that vide letter dated 30.08.2024 (Annexure P-9), complainants informed respondents that they have filed the present complaint. It is further submitted that both the complainants are senior citizens and suffering from medical ailments. Complainant no.1 underwent open heart surgery in March 2023 and complainant no.2 also detected cancer and remained under treatment till 2023. Complainants contended that photocopies of cheques purportedly issued in favour of complainant no.2 attached by respondents, but original cheques were never handed over to complainants. Complainants further contended that respondents have not produced any their own statement of accounts under which amount of these cheques were debited from their account and credited to the account of complainant no.2. Regarding the amount of Rs.1,12,940/- claimed by respondents as credit to BSP, it is replied that this amount was towards discount given by respondents on timely payments as per payment schedule. Thus, the judgement relied upon by respondents are not relevant to the present case, as the amount was paid under the head 'assured return', whereas in the present case, complainants never received any cheques purportedly issued by respondents in favour of complainant no.2. Complainants denied rest of the allegations/averments of the respondents and stressed that respondents are liable to refund of the entire amount along with interest thereon.

5. Complainants while arguing their case reiterated the contents of complaint and rejoinder and also relied upon annexures from pages 6

to pages 35. It is argued that since the respondents failed to deliver possession of their apartment within the stipulated period i.e on 25.11.2020 and also the fact that vide letters dated 17.08.2023 and 10.10.2023 the complainants explained their medical positions and also demanded compensation by way of interest. It is further argued that Complainants cannot wait indefinitely for the development of the project. Counsel further argued that respondent no.1 has not obtained/produced Occupancy/Completion Certificate so far. Therefore, the complainants vide legal notice dated 28.11.2023 sent through registered post to the respondents demanded refund of Rs.47,71,663/- along with interest thereon. It is further argued that despite sending legal notice dated 28.11.2023, demanding refund of Rs.47,71,663/- and interest thereon, respondent no.1 vide letter dated 23.06.2024 (Annexure P-7 attached with the rejoinder) demanded a further sum of Rs.3,48,727/- from complainants. Counsel for complainants also drew attention of this Bench towards Annexure P-7 (supra) and argued that there is no reflection of payments of cheques issued in favour of complainant no.2 annexed by respondent no.1 with its reply and they demanded only Rs.3,48,727/- from complainant that too after issuance of legal notice dated 28.11.2023 wherein complainants prayed for refund along with interest thereon. It is accordingly argued that respondents be directed to refund the amount of Rs.47,71,663/- along with interest as prescribed under the Act of 2016.

6. On the other hand, counsel for respondents argued that due to Covid-19 pandemic it was difficult for the developers to carry on construction activities; relied upon Advisory dated 13.05.2020 issued by the Ministry of Housing and Urban Affairs; order dated 10.05.2023

passed by the Hon'ble State Consumer Dispute Redressal Commission, Chandigarh in the case of "Ramesh Kumar Vs Omaxe"; "Kishor V. Patil and Anr. Vs M/s Marvel Zeta Developers Pvt. Ltd. and Anr." (Consumer Case No.58 of 2022), and judgement of the Hon'ble Supreme Court in its Suo Moto Writ Petition(C) No.3 of 2020 in support of its case. He also argued that as per agreement possession was to be delivered within 48 months. He further argued that respondent no.1 had paid Rs.88,044/- through cheques and another benefit of Rs.1,12,940/- credited to BSP to complainants. It is prayed that if this Authority is going to allow the refund and interest thereon, then this amount be set off from the due amount.

7. The undersigned considered the rival contentions of both the parties and also perused the available record of this complaint.

8. From the above facts, there is no dispute about Apartment No.B-306, Tower-B on 3rd Floor, allotted to the complainants in the project known as 'Sushma Grande NXT', located at village Gazipur, MC, Zirakpur; issuance of allotment letter dated 26.05.2017 mentioning the Basic Sale Price of Rs.58,09,095/-; execution of Unit Buyer's Agreement between the parties on 26.05.2017 and as per its clause 11.1 possession of the Apartment was to be delivered within 48 months. It is also admitted fact that possession of the apartment has not been delivered to complainants till date, resulting in filing of the present complaint seeking refund of the amount of Rs.47,71,663/- along with prescribed rate of interest.

9. Perusal of Unit Buyer's Agreement executed between the complainants as well as respondent no.1 through respondent no.2 revealed that as per Clause 11.1-SCHEDULE FOR POSSESSION OF THE

SAID UNIT- possession was to be delivered within a period of 42 months from the date of execution of this agreement by developer and thereafter, the developer shall offer possession of the said unit unless there shall be delay or failure due to *Force Majeure* conditions and due to reasons mentioned in Clause 11.2 or due to failure of the Unit Buyer to pay in time the Total Sale consideration, Taxes, deposits, interest, securities etc. and dues/payments or any failure on the part of the Unit Buyer to abide by all or any of the terms and conditions of this Agreement. Besides, the Unit Buyer agreed and understood that if the Developer was unable to give possession within the period as mentioned hereinbefore, the Unit Buyer shall unconditionally grant the developer a grace of 6 (six) months. Thus, as per this clause possession of the apartment was to be delivered within 48 months i.e by 25.05.2021. However, it is apparent from record that respondent no.1 failed to deliver possession of the said apartment to the complainants within that stipulated period of 48 months. It is also apparent from record that since respondent no.1 failed to deliver possession, complainants sent legal notice on 28.11.2023 through registered post with the following prayer:

"Under the circumstances, I do hereby call upon you through this legal notice and demand you to refund an amount to the tune of Rs.47,71,663/- along with interest@ 18%"

10. Further as per para 19 of the judgement passed by the Hon'ble Supreme Court on 11.11.2021 in the matter of Civil Appeal Nos.6745-6749 of 2021 titled "*M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Ors.*" it was held as under:-

"19. Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf".

11. In view of the above law, this case is thus accordingly squarely covered within the definition of Section 18 of the Act of 2016 which reads 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..."

12. In view of above provision, and the fact that the complainants vide legal notice dated 28.11.2023 sought refund, prior to the filing of present complaint filed on 31.01.2024, it is held that the complainants are entitled for refund of Rs.47,71,663/- . Further, it is a general financial principle that the interest of any money belongs to the person

(complainants) who owns the money. The interest upon refund is stipulated in the Act as per provisions of Section 18 of the Act. Thus, the complainants are also entitled for interest on the sum of Rs.47,71,663/- as prescribed in the Act of 2016.

13. Further, as per para 13 of the reply dated 08.01.2025 as projected by respondent no.1 that "*the complainants have further been appropriately compensated and have been paid a substantial amount of Rs.88,044/- (Rupees Eighty Eight Thousand and forty Four only) to complainant via cheques and benefit of Rs.1,12,940/- (Rupees one lac twelve thousand nine hundred and forty only) was credited to BSP due to complainant (as shown as Frill Adjustment in SOA). In lumpsum an amount of Rs.2,00,984/- (Rupees two lacs nine hundred eightyfour only) has been credited to the complainants by the respondent towards their unit....*". Counsel for respondent has attached photocopies of cheques favouring Ms. Meenu Kapoor (complainant no.2) out of which eight cheques are of the amount of Rs.10,665/- each and nineth cheque is of Rs.6,137/- issued from January 2020 till August 2020 in support of its case. The total of these cheques comes to Rs.91,457/-.

14. On the other hand, in reply to this assertion of respondent no.1, counsel for complainants drew attention towards para 13 of their rejoinder dated 08.05.2025 that "*the content of paragraph no.13 is denied being wrong, false and incorrect. It is submitted that the respondents in order to mislead and misrepresent this Hon'ble Authority, cleverly producing the photocopies of the cheques in the name of complainant no.2, whereas, original were never handed over to the complainants. It is submitted that the respondent has failed to produce any receipts of these cheques and also failed to annexed any*

forwarding letter vide which these cheques were delivered to the complainants. Further, also, the respondents, intentionally and deliberately in order to mislead this Hon'ble Authority, failed to produce their account statements, under which amount of these cheques were debited from the account of the respondents and credited in the account of complainant no.2. The complainants state with responsibility that they have never received these cheques, thus question of getting encashed of these cheques do not arise. It is submitted that Rs.1,12,940/- as claimed by the respondents was credited to BSP was not the amount credited in the account of the complainants, rather it was the discount given by the respondents on timely paying the payments as per payment schedule. It is further submitted that the judgement referred in this paragraph has no relevancy in the present case, as in the said case the respondent paid the amount on account of assured return, whereas in the case at hands the complainants never received the cheques as alleged by the respondents."

15. Perusal of the file revealed that Counsel for complainants submitted rejoinder on 03.07.2025 and also supplied a copy thereof to counsel for respondents and the matter was adjourned to 21.08.2025. Thereafter matter was adjourned to 16.10.2025; and 11.12.2025 and on 11.12.2025 both the counsels for parties addressed their arguments and the matter was reserved for order. From 21.8.2025 till 11.12.2025, Counsel for respondents has not produced any rebuttal to the assertion of the complainants that "Further, also, the respondents, intentionally and deliberately in order to mislead this Hon'ble Authority, failed to produce their account statements, under which amount of these cheques were debited from the account of the respondents and credited

in the account of complainant no. 2. The complainants state with responsibility that they have never received these cheques, thus question of getting encashed of these cheques do not arise" mentioned in para 13 of the rejoinder whereby complainants denied having received payments of these cheques enclosed by respondent no.1 with its reply dated 08.01.2025.

16. It is noteworthy that respondents failed to place on record its statement of accounts showing the debit of amounts of these nine cheques from their account and credited in the account of the complainants to substantiate and prove their case.

17. As a net result of the above discussion, this complaint is accordingly allowed and respondents no.1 is directed to refund the amount of Rs.47,71,663/- along with interest at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the dates of respective payments till the date of actual refund.

18. It is also further directed that the amount of refund along with interest thereon should be paid by respondents no.1 to complainants 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 and submit a compliance report to this Authority about releasing the amount along with interest as directed.

19. It may be noteworthy that in case compliance report is not submitted by respondents no.1 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.

20. The complainants are also directed to submit report to this Authority that they have received the amount along with interest as per directions issued in this order.

21. Till then the complainants shall have the charge on the allotted Residential Unit No. B-306m Tower-B, Village-Gazipur, Zirakpur in the residential complex "GRANDE NXT,". The complainants are further directed to execute a Cancellation Deed on receipt of payment of refund and interest thereon from respondents no.1 thereafter.

22. File be consigned to record room after due compliance.



(Binod Kumar Singh)
Member, RERA, Punjab