

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

Complaint GC No.0323 of 2024

Date of Institution: 06.09.2024

Dated of Decision: 10.03.2026

1. Dushyant Bakshi, and

2. Sunita Bakshi,

Both resident of R-4, 168/2, Sushma Valencia District Sahibzada Ajit Singh Nagar (Mohali), Punjab -140603

....Complainants

Versus

1. M/s Suksha Developers Pvt Ltd, Unit No. B-107, Business complex at Elante Mall, Ist Floor, Industrial area, Phase-1, Chandigarh-160002.

2. Manhattan Infra Services Pvt Ltd, B-107, FF, Business Complex at Elante Mall, Industrial Area phase1, Chandigarh - 160002

....Respondents

Present: 1. Shri Onkar Chauhan, Advocate for the complainant,
2. Shri Vishal Singhal, Advocate for the respondent.

ORDER

1. 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 06.09.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 Respondent be directed to provide with all amenities such as permanent electricity connection from PSPCL, Water connection from MCD, Swimming pool, Club house, Gymnasium, Children Park, clean water,

securities services, proper stilt car parking, occupation certificate as agreed in the agreement for sale and as per the provisions of the Act.

- 1.2 Respondent be directed to pay to the complainant interest for the delay of possession of their flats quantified as interest @ 24 % per annum on the amounts paid to respondents from the date of each payment till the date of delivery of possession with occupation certificate;
- 1.3 Respondents be further directed to obtain electric connection from urban line instead of agricultural supply;
- 1.4 Respondent be further directed to refund the maintenance charges of Rs.80,506/- along with interest charged from the complainants w.e.f. 20.02.2024 to 30.09.2025, as the incomplete possession was delivery on 18.03.2024 without the availability of all the amenities/facilities as agreed in the agreement;
- 1.5 To provide proper maintenance facilities to the complainants at its own cost until obtaining occupancy certificate;
- 1.6. To pay a sum of Rs. 50,000/- to each consumer to reimburse legal costs and expense;
- 1.7 To issue direction to pay the cost of litigation

2. Brief facts of the complaint as submitted by complainant are summarized below: -

- 2.1 The complainants had booked and has been allotted vide letter dated 08/06/2020 a residential Unit/Apartment No. R4-168/02, 2nd floor in pocket R-4 along with a stilt parking in the Project named "SUSHMA VALENCIA", situated at Kishanpura, Hadbast No. 54, Sub Tehsil Zirakpur, Tehsil Derabassi, District SAS Nagar, Punjab. Copy of the Allotment Letter dated 03/06/2020 is marked & annexed as ANNEXURE C-1.

- 2.2 As per sub clause 7.1 of possession of the said apartment was to be handed over on 31.03.2021 after obtaining completion/occupation certificate. As per clause 11 the promoter shall be responsible to provide and maintain essential services of the project till the taking over of the maintenance of the project by the association of allottees.
- 2.3 The complainants remained stick to payment schedule as provided by respondent No.1/ promotor, however, possession of the apartment was not handed over on 31.03.2021 as agreed in the agreement. The complainants have paid total amount of their agreement as well as advance maintenance charges of Rs.1,38,500/-. The details of the payment made to the respondent No.1 from time to time are annexed and marked hereto as Annexure C-2.
- 2.4 The complainants stated that the respondent No.1/ promotor not only violated sanctioned plan but also deprived flat buyers of various common facilities such as permanent electric connection, swimming pool, club house, Life style Club, Spors Club, gymnasium etc. as promised in its brochure, even after 2 years from promised date of possession.
- 2.5 The complainants also stated that the respondent No.1/ promotor failed to obtain occupation certificate till date and offered incomplete possession to many flat buyers including present complainants who were constrained to accept possession on 15.09.2021 and there is no permanent electric connection. A copy of certificate of possession of complainants is further marked and annexed here as Annexure C-3.
- 2.6 The complainants further stated that the respondent No.1/ promotor appointed respondent No.2 as its maintenance agency for the management, operation, maintenance, and upkeep of common areas, services and facilities of the complex. Although, it is a bounden duty of

respondent No.1 to provide maintenance in complex, however, respondent No.1 persuaded flat buyers including the complainants to sign an agreement with respondent No.2 for maintenance of the society and collected an amount of Rs.1,38,500/- in advance for a period of more than 2 years from each resident. A copy of maintenance agreement dated 15.09.2021 is also annexed and marked hereto as Annexure C-4.

2.6 The complainants pointed out several flaws in the current development of the society such as there are no proper permanent electricity connection for the project, lack of water supply, faulty lifts etc.

2.7 The complainants also raised the issue that the promoter cannot charge Holding charges and Maintenance without valid offer of possession and also liable to pay delayed possession charges as per clause 7.6 and 9.2 (ii) of the agreement.

3. Upon notice Shri Vishal Singhal, Advocate appeared for the respondent and submitted his reply on 06.01.2025 to the following effect:

3.1 While taking preliminary objections that the contents of the complaint are false and the complainant has not approached this Authority with clean hands, the respondent repeated the contents of the complaint i.e. signing of agreement for sale for Unit No. R4-168/02, 2nd Floor, issuance of allotment letter on 08.06.2020 (Annexure-R-1). The Complainant executed an Agreement for Sale on 03.06.2020 and as per Clause 7.1 of the said agreement, the possession of the unit was to be delivered by 31.03.2021, subject to *force majeure* conditions as explicitly defined therein (Annexure R-2).

3.2 The Respondents emphatically denies the Complainant's allegations regarding delays in possession. Any delays were directly attributable to unforeseen circumstances beyond the Respondent's control, most

significantly, force majeure conditions caused by the COVID-19 pandemic.

3.3 It is pertinent to note that both the Hon'ble State Consumer Disputes Redressal Commission {SCDRC}, Chandigarh, Hon'ble State Consumer Disputes Redressal Commission {SCDRC}, Punjab and the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) have acknowledged delays in project timelines due to COVID-19 as legally justifiable force majeure events and have extended date of possession by 6-9 months.

3.4 It is respectfully submitted that the timeline for delivery of possession must be assessed in light of the principle of reasonableness and fairness, as established by the Hon'ble Supreme Court in M/S. fortune Infrastructure (Now Known as M/S. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima & Ors (Civil Appeal Nos. 3533-3534 of 2017). In this judgment, the Apex Court unequivocally held that, in the absence of specific contractual stipulations, a reasonable period of three years from the date of execution of the Agreement for Sale should be considered adequate for the completion of the contract. It is further submitted that due to unprecedented disruptions caused by the COVID-19 pandemic qualifies as a force majeure event and Hon'ble State consumer commission of Punjab as well as Chandigarh have accepted Covid-19 as Force majeure in view of government of India guidelines/notifications and extended date of possession by 6-9 months and so considering the said extension there is no delay. This period must be excluded from the calculation of the possession timeline, as it was beyond the reasonable control of the developer.

3.5 In compliance of the Agreement for Sale, the Complainants were duly offered possession of their unit through an *Offer of Possession Letter* dated 01.09.2021, a copy of which is appended herewith as Annexure

R-3. The complainants were also advised to execute a Maintenance Agreement to ensure the proper upkeep of their unit and maintenance and management of the common areas and facility of the project. Thereafter, complainants executed a Maintenance Agreement dated 15.09.2021 (annexure R-4). The respondent also stated that the complainants vide letter dated 15.09.2021 formally requested the handover of physical possession of Residential Unit No. R4-168/02, 2nd floor, in the housing project Sushma Valencia, Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab, PIN Code Nagar, Mohali with a request to carry out interior work in the said unit (Annexure R-5). Copy of complainants' letter of Intent to take possession is annexed as Annexure R-6. The Complainants also provided an undertaking dated 15.09.2021, confirming their satisfaction with the layout of the complex, the location of various installations, and the services completed, while submitting their no objection. A copy of the undertaking is appended as Annexure R-7. Thereafter, physical possession of the unit was handed over to the Complainants on 15.09.2021.

3.6 The respondent again stated that after possession, the complainants furnished a Satisfaction Affidavit/Certificate on 15.09.2021, wherein they confirmed having thoroughly inspected the building plan, fittings, furnishings, and construction quality of the unit. Furthermore, the Complainants explicitly declared and confirmed that they would not raise any claims, disputes, or objections regarding the construction quality or *possession of Residential unit No. R4-168/ 02, situated at 2nd Floor in the housing project Sushma Valencia, located at, Village Nagla, MC Zirakpur, SAS Nagar, Mohali.* A copy of the satisfaction Affidavit/Certificate dated 15.09.2021 is appended herewith as Annexure R-10. Respondent stated that the Conveyance *Deed has been*

executed in the favour of complainants on 28.03.2023, after satisfactorily in possession of the unit. By executing the *Conveyance Deed*, the ownership of the unit was transferred to the complainants, thereby relieving the Respondents of any further liabilities concerning the said unit. A copy of the Conveyance Deed duly registered on 28.03.2023 is appended as Annexure R-11.

3.7 Respondent argued that the complainants' allegations regarding the electricity connection and the availability of common services and facilities are completely baseless and factually incorrect. The complainant has been issued electricity connection of PSPCL, any issue regarding the electricity connection shall be brought before the PSPCL, which is the appropriate concerned Authority. Further, complainant is also getting uninterrupted supply of water. However, the complainant has failed to provide any documentation or evidence to show that they have brought any issue concerning connections of electricity or water with the concerned authorities. It is further submitted that most of the common facilities in the project are complete.

 4. On 13.11.2025, case was fixed for argument and nobody appears on behalf of complainants. In the interest of justice another opportunity was given for arguments and case is fixed for 22.01.2026 for arguments. Again on 22.01.2026, nobody attended the proceeding on behalf of the complainants. Sh Vishal Singhal, Advocate has argued the case on behalf of the respondent. The undersigned heard the arguments of counsel for respondent and on perusal of written submissions of complainants and respondent. The authority has considered the submission of complainant and is of considered view that the complainant has not submitted any evidence to manifest that the possession of the unit was taken by complainant by means of any force, coercion and threat.

4.1 The respondent also argued that pandemic of Covid-19 occurred with effect from March 2020 onwards and possession as claimed by complainants was to be handed over on 31.07.2021 and this Authority had itself granted 6 months reprieve to the promoters. It is further stated that the case of respondent that during the intervening period of March 2020 to July 2021 due to Covid-19, the construction was at snail's pace and respondent could not meet the dead line and prayed for six months exemption from payment of interest for the period of delay. He has also relied upon various orders of the competent Authorities in this regard.

4.2 It is a matter of record that Hon'ble Real Estate Appellate Tribunal, Punjab vide its order dated 22.08.2022 in Appeal No.100 of 2021 titled as "*Hero Realty vs Arun Premdhar Dubey*" held that due to *force majeure* on account of Covid-19, "*a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed*". In view of above position the period of 4 months of *force majeure* has to be excluded from the period of delay in handing over possession to the complainant, order accordingly.

 4.3 Vide letter/undertaking dated 15.09.2021, the complainant has requested the respondent/promotor for possession of the flat. As per undertaking dated 15.09.2021, complainants themselves confirmed their satisfaction about layout of the complex, location of various installations and the services. Further, the complainants themselves have furnished a satisfaction affidavit to the respondent regarding building plan, fitting/furnishings and quality of construction. Furthermore, the complainants had executed the conveyance deed in their favour on 28.03.2023 in respect of unit no. R4-168/02, 2nd floor, in the project Sushma Valencia, Zirakpur, SAS Nagar, Mohali. In view of above said

facts, the respondents had stated that he had complied with his contractual duties.

- 4.4 It is always advisable that possession of unit should be taken when the builder has all clearance from competent authority including occupation certificate/completion certificate. The moot question lies whether if the allottees has taken possession and promoter has no occupation certificate from the competent authority, whether allottee is obliged to pay maintenance charges or not.
- 4.5 Further as per provision of RERA Act, builder responsibility u/s 11(4)(d) of the RERA Act means that the promoter/builder is responsible for providing and maintaining essential services at reasonable charges until the maintenance is taken over by the Association of Allottees i.e. RWA and section 11(4)(g) mandates that the promoter must pay all outgoing (including land cost, ground rent and maintenance) until he transfers physical possession to the allottee.
- 4.6 Regarding the issue of maintenance charges, it is fact that, the complainants has taken actual physical possession of their respective unit and even conveyance deed has also been executed in their favour. The complainants are using the same for residence, in such case the possession is not considered a "paper possession or "fit-out possession". If allottee take possession on its own and uses the facility provided by the builder/promoter he cannot avoid the maintenance charges as he is using premises which is being maintained by promotor/builder. Allottee hold the possession of unit and at the same time, he cannot deny Common Area Maintenance Charges. For maintenance of common area and for providing essential services like water, electricity builder/promoter has to spent certain amount which would have to be recovered from the resident of building, if they have taken possession. In this case, the complainant has already taken the possession and to maintain the common area and to use essential services, he needs to

pay for common area maintenance charges and services actually used by complainant. Hence it is observed that if an allottee is actually residing in the premises and consuming services (Water, electricity, security), they may be liable to pay for those specific services.

4.7 The complainants had booked and has been allotted vide Letter dated 08/06/2020 a residential Unit/Apartment No. R4-168/02, 2nd floor in pocket R-4 along with a stilt parking in the Project named "SUSHMA VALENCIA", Zirakpur, SAS Nagar, Punjab. Due date for possession was 31.03.2021 and possession was handed over on 15.09.2021. Hence there is delay in handed over the possession of the above said Unit. 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.

4.8 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

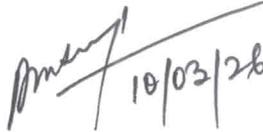
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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."

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

- 5.1 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 plus two percent i.e. 8.80%) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs. 42,72,750/- paid by complainant till 31.03.2021 i.e. due date of possession to 15.09.2021 i.e. date of possession given by the respondent to complainants (minus four months being force majeure event as discussed in para 4.2 above) 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.
- 5.2 The respondent/promoter directed to obtain the occupancy certificate from the competent authority after obtaining all clearance.
6. 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.
7. Regarding findings of club house, swimming pool, gymnasium, children's park and any deficiency, the complainant is at the liberty to approach the adjudicating officer through application in form "N".
8. File be consigned to the record room after due compliance.


(Binod Kumar Singh)
Member, RERA, Punjab