

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

Complaint No.0418 of 2024  
Date of Institution: 02.12.2024  
Dated of Decision: 02.02.2026

Mrs Sushma Rani W/o Sh Ram Lal Goyal, # Flat No. 105, GH 103, The Angel Co-op. Society, Sector-20, Panchkula.

....Complainant

Versus

M/s Sushma Buildtech Ltd, through Sh Parteek Mittal and Sh Bharat Mittal, Unit No. B-107, Ist Floor, Business Complex, Elante Mall, Industrial Area, Phase-1, Chandigarh.

....Respondent

Present: 1. Shri Sanjeev Gupta, advocate and Sh Ripudaman Singh, Advocate, for the complainant  
2. Shri Sanjive Sharma Advocate for the respondents

**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 02.12.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 Issue direction to the respondent to handover the actual physical possession of the unit bearing No. L702 (on 7th Floor) measuring 1310 sq. ft. of super area & 787.806 sq. ft. of carpet area, in "Tower L", after obtaining the occupation certificate from the competent authorities.

1.2 To pay interest for the period of delay in handing over possession w.e.f. 19.03.2022 till the delivery of valid possession.

1.3 To direct the respondents to refund the excess & charged amount of Rs.60,348/- along with interest w.e.f. 31.03.2023, since the complainant has already paid an amount of Rs.41,55,322/- against the agreed sale consideration of Rs.40,94,974/-.

1.4 The respondent be further directed to pay the amount of 2% rebate to the complainant in terms of clause 1.5 of the agreement for sale along with interest thereon w.e.f. 31.03.2023.

1.5 The respondents be also directed to correct wrongly mentioned "pro rata shares in the common areas admeasuring 522.194 sq.ft. under recital 'G' of the agreement for sale, to "pro rata share in the common areas as defined under section 2(n) of the Act" and delete 4th to 9th bullet points of clause 16 of the agreement for sale, being in violation of the provisions of section 13(2) of the Act.

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

2.1 The complainant booked a 2BHK apartment No. L-702 measuring 1310 sq. ft. of super area & 787.806 sq. ft. of carpet area in August, 2020 in the project "Sushma Crescent" being developed by the respondents in Zirakpur, for a total sale consideration of Rs.40,54,818/- (BSP Rs. 40,15,519/- + IFMS Rs. 39300/- with 1% GST on BSP but inclusive of all other charges/taxes).

2.2 The complainant paid Rs.2,20,000/- to the respondent on 27.08.2020 and Rs. 3,00,000/- on 31.08.2020. Thus, the complainant had paid an amount of Rs. 5,20,000/- by 31.08.2020. An allotment letter (Ann C-1) for said unit was issued to complainant on 17.09.2020. An agreement of sale for the unit was also executed between complainant & respondent on 17.09.2020 (Ann C-2).

2.3 The complainant stated that as per clause 1.5 of the said agreement, it was specifically mentioned that a rebate of 2% PA will be given in case of early payments of installments. Accordingly, complainant paid the installments in advance, without even waiting for the demand letters from the respondent. The complainant paid Rs.5,00,000/- on 20.09.2020, Rs.24,27,322/- on 25.09.2020 and Rs.7,08,000/- on 31.03.2023. The complainant paid the said amount in advance in order to get the said rebate of 2% but the respondent had not given any rebate to complainant. Till date, the complainant has already paid an amount of Rs. 41,55,322/- to the respondent which is more than agreed sale consideration i.e. Rs. 40,94,974/- (BSP Rs. 40,15,519/- + 1% GST thereon + Rs. 39,300/- IFMS).

2.4 Further, as per clause 7.1 of the said agreement, the possession of the said unit was to be handed over on 19.03.2022. However, the respondents have failed to offer the possession of the unit in question till date. The respondent agreed to compensate her by paying the monthly rent @ Rs.15,000/- per month commencing from 19.09.2022 till offer of possession after executing an agreement dated 27.02.2023.

2.5 The complainant stated that another agreement (Ann C-4) was got executed by the respondent on 27.02.2023 by misrepresenting the complainant. In the said agreement, the respondent arbitrarily mentioned certain conditions without making the complainant aware about the same. After getting the agreement executed, the respondent neither handed over the cheques towards the monthly rent of Rs.15,000/- per month nor provided copy of the said agreement to the complainant. Accordingly, the complainant vide email dated 08.05.2023 requested the respondent to provide her the cheques & copy of the agreement. Having received no reply, the complainant along with her husband visited the office of respondent for getting the cheques & copy of the agreement. Total 12 cheques amounting to Rs.2,31,000/- along with the copy of the said agreement was handed over

to the complainant. The complainant vide email dated 24.06.2023 (Ann C-7) informed the respondent that the said agreement is contrary to provisions of RERA Act & Rules and requested the respondent to pay the compensation as per the sale agreement.

2.6 The complainant further alleged that the recital 'G' of the agreement for sale dated 17.09.2020 provides for the 'common areas' of the unit as 522.194 sq. ft. which is equal to difference in its super area of 1310.00 sq. ft. & carpet area of 787.806 sq. ft. This provision regarding the 'common area' contradicts the corresponding provision in the format of agreement of sale prescribed in Punjab RERA Rules in compliance of Section 13(2) of the RERA Act, which provides for 'pro rata share in common areas as defined under Section 2(n) of the Act' and as per Section 2(n) entire land for the project/phase, certain installations, apparatus, facilities etc are also included in 'common area'. Moreover, in violation of provisions of Section 13(2) of the Act, additional provisions have been made under 4th to 9th bullet points of clause 16 of the agreement for sale, which adversely affect the rights of the allottees.

3. Upon notice Shri Sanjive Sharma, Advocate appeared for the respondent and submitted his reply on 05.06.2025 to the following effect:

3.1 At the outset, all allegations, averments, and contentions raised by the Complainants are denied as being false, baseless, and misleading unless specifically admitted herein. Any contents not specifically denied, admitted, or replied to should be deemed denied. While taking preliminary objections that the contents of the complaint are false and the complainant has not approached this Authority with clean hands.

3.2 That the complainants had agreed to purchase residential apartment Unit No. L-702, situated on the 7<sup>th</sup> Floor of the residential complex known as "Sushma Crescent" located at Village Gazipur & Kishanpura, Zirakpur, district SAS Nagar, Mohali, Punjab, through an application dated 27.08.2020.

Subsequently, the said unit was allotted to the complainant vide allotment letter dated 17.09.2020, for a Basic Sale Price of Rs.45,36,687/-. The complainant also executed an Agreement for Sale on 17.09.2020. As per the agreement, possession of the said unit was to be delivered on 19.03.2022, subject to delays caused by force majeure conditions. The respondent stated that the delay in the completion of the project, was significantly impacted by force majeure conditions, notably the COVID-19 pandemic, as the force majeure conditions were beyond their control. Furthermore, it is also stated that there was delay in payments by complainant.

3.3 The respondent submitted 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. That it is pertinent to bring to the attention of this Hon'ble Authority that the *National Consumer Disputes Redressal Commission (NCDRC), New Delhi*, in the case of Kishor V. Patil & Anr. Vs. M/s. Marvel Zeta Developers Pvt. Ltd. & Anr., *Consumer Case No. 58 of 2022*, further held that the nationwide lockdown imposed from 22.03.2020, due to the COVID-19 pandemic, constituted a *Force Majeure* event.

3.4 The Respondent also stated that the Complainant entered into a settlement agreement dated 27.02.2023, pursuant to which, as per Clause-1 of the said Agreement, she was granted compensation for delayed possession at the rate of ₹15,000/- per month. This compensation was calculated from 19.09.2022 until the date of offer of possession, after accounting for a six-month extension attributable to the disruptions caused by the COVID-19 pandemic. The terms were accepted by her voluntarily and of her own free will, without any coercion or undue influence, and after having full knowledge and understanding of the legal implications. A copy of

the Settlement Agreement dated 27.02.2023 is appended herewith as ANNEXURE R-4.

3.5 The counsel of the respondent has stated that the complainant has further been appropriately compensated and have been paid a substantial amount of Rs.2,31,000/- towards the delay in possession in terms of the Settlement Agreement dated 27.02.2023 for their unit. A copy of the details of payments made to the complainants is appended herewith as Annexure R-5 (Colly). It is further submitted that in the event any compensation for delayed possession or refund is allowed in favour of the complainants, such award must be subject to the deduction of amounts already paid to the complainants, along with accrued interest.

3.6 The Complainants' assertion regarding an alleged excess payment of Rs.60,348/- is entirely misconceived and devoid of merit. It is submitted that Clause 1.5 of the Agreement is discretionary in nature and does not create any binding obligation upon the answering Respondent. The said clause does not entitle the Complainants to any refund or adjustment, and the interpretation being advanced by them is contrary to the plain language and intent of the Agreement.

3.7 It is also pertinent to mention that Section 2(n) of the Real Estate (Regulation and Development) Act, 2016 merely defines the term "common areas" and does not in any manner support the Complainants' contention. Clause 'G' of the Agreement for Sale specifically mentions the super area of the unit as 1310 square feet, which was disclosed to and accepted by the Complainants at the time of execution of the Agreement for Sale. Furthermore, bullet points 4 to 9 under Clause 16 of the Agreement for Sale are binding not only on the Complainants but on all allottees across the project. These clauses were mutually agreed upon and form an integral part of the contractual obligations between the parties. The Complainants'

attempt to now seek deletion or negation of these clauses is an afterthought and constitutes a clear misinterpretation of the agreed terms and conditions.

5. Complainant filed his rejoinder controverting the allegations of the written reply filed by Respondent No.1 is wholly incorrect and misconceived, and reiterated the contents of their complaint under Section 31 of the RERA Act, denying all statements contrary thereto. It is stated by the complainant in the rejoinder that it is evident that Respondent No.1 admits to having received Rs.45,97,029/- (after GST adjustment) from the Complainant.

6. Both the Counsel for the complainant as well as respondent addressed their respective arguments on 15.01.2026.

7. Learned Counsel for the complainant argued that they were allotted a 2BHK residential Unit No. L702 on 7<sup>th</sup> floor vide Allotment Letter dated 17.09.2020 in the project "Sushma Crescent", by respondents no.1 and 2. Thereafter, an agreement was also entered into between the parties on 17.09.2020, and possession was to be delivered on 19.03.2022, as per Clause 7.1 of the said Agreement but the respondent failed to do so. The complainants have paid Rs.45,97,029/- against the agreed price of Rs. 45,36,687/-. 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.

7.1 Counsel for respondent while reiterating the contents of his reply dated 03.06.2025 to justify the delay in delivery of possession stated that the delay in construction caused by the lockdown imposed on account of Covid-19 pandemic. Respondent admitted the receipt of Rs.45,97,029/- out of total sale consideration of the Unit amounting Rs.45,36,687/- and prayed that there is no cause of action arose in favor of the complainant to file the instant complaint and prayed that the instant complaint be dismissed with costs.

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

8.1 The complainant has raised the issue that wrongly mentioned "pro rata shares in the common areas admeasuring 522.194 sq. ft under recital 'G' of the agreement for sale, to "pro rata share in the common areas as defined under section 2(n) of the Act" and delete 4th to 9th bullet points of clause 16 of the agreement for sale, being in violation of the provisions of section 13(2) of the Act. As per Section 2(k) of the RERA Act defines "carpet area" as the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. And, the Super area/Super Built-Up Area is the total area of the flat, including the built-up area, and common areas/utilities such as drainage, ventilators, entrance lobby, electrical shafts, fire shafts, plumbing shafts and service ledges on all units, common areas such as entrance lobby, lifts, common corridors and passages, staircases, service areas etc. The super built-up area also includes the proportionate area of the amenities and facilities. As per agreement dated 17.09.2020 in para 'G' description of super area and carpet area is mentioned. Further, sale price in terms Sq Foot rate of unit mentioned in said agreement. Further, RERA Rules 4(3) states that it is mandatory to only disclose the size of the apartment based on basis of carpet area. Respondent has not charged the price on the basis of Sq Feet but price mentioned for the unit having defined super area/carpet area includes price of common facilities also. Total price of the unit includes the pro-rata share in the common areas as well as the garage/parking. Therefore, the contention of complainant is not acceptable on this issue. Further, any terms and

conditions mention in Agreement to Sale which are in violation of the provisions of the RERA Act are not enforceable by either of the parties.

8.2 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 7.1 of the agreement the date of possession is 19.03.2022. It is established on record that till today possession of unit has not been handed over to the complainant. Regarding the pandemic of Covid-19, due to which respondent was not able to give possession of the Unit to the complainant is without any substance as the date of agreement was 17.09.2020 and the pandemic was from March 2020. It is noteworthy that the agreement was executed on 17.09.2020 during the course of the Covid-19 itself. If respondent can execute the agreement and accept the amount for the Unit during the occurrence of the Covid-19, they are liable to hand over possession on time as prescribed in the agreement dated 17.09.2020. 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.

9 As a result of the above discussion, this complaint is accordingly partly 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."*

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

10.1 On perusal of the statement of accounts (page no.36 to 38) dated 03.06.2025 submitted by the respondent, it observed that the respondent has received amounting Rs.45,97,029/- against cost of unit Rs.45,36,687/- i.e. excess amounting Rs.60,342/-. In this regard, respondent directed to refund the excess amount to the complainant within ninety days from the date of receipt of this order.

10.2 To issue offer of possession letter in writing to the complainant within the time stipulated as per term and condition mentioned in column 7.2 of the 'agreement for sale' dated 17.09.2020 after obtaining completion certificate from the competent authority. Regarding provision of allowing rebate @2%, its sole discretion of the promoter who may allow for early payments of installments as the condition in the contract between promoter and allottee, is beyond the provisions of RERA Act, hence no relief on this issue can be allowed.

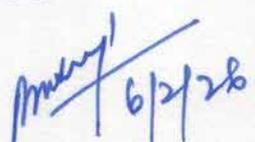
10.3 To pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate plus two percent i.e. 8.80%) prescribed in Rule 16 of the Rules

of 2017 on the amount of Rs.45,36,687/- paid by complainant with effect from 19.05.2022 till 05.02.2026 i.e. date of order in the first instance i.e. 1746 days and interest amounting is Rs.23,50,474/-) 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. An amount of Rs. 2,31,000/- in the form of post-dated cheques, already received by the complainant may be adjusted from the delayed period interest which the respondents are liable to pay to the complainant if the said postdated cheque credited from the bank account of the respondent.

10.4 Further, respondent is also directed to pay interest on an amount of Rs.45,36,687/- @ 10.80% from date of issue of order to actual date of possession or two months after getting the completion certificate by competent authority whichever is earlier.

11. 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.

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

  
(Binod Kumar Singh)  
Member, RERA, Punjab