

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

Complaint No. RERA/ GC No.0412 of 2024

Date of filing: 25.11.2024

Dated of Decision: **01.04.2026**

1. Ankur Mahajan son of Sh. Pradeep Mahajan;
2. Chanchal Mahajan wife of Ankur Mahjan
Both residents of Flat No. F- 804 Sushma Crescent-1, Punjab.

...Complainants

Versus

1. M/s Suksha Developers Pvt. Ltd, Regd. Office: B-107, Business Complex at Elante Mall, Ind. Area, Phase-1, Chandigarh through its Director Sh. Binder Pal Mittal.
2. M/s Manhattan Infra Services Pvt. Ltd. Regd. Office: B-107, Business Complex at Elante Mall, Ind. Area, Phase-1, Chandigarh through its Director Sh. Sanjiv Kumar.

... Respondent

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

Present: Sh. Suresh Kumar, Advocate representative for the complainants
Sh. Sanjeev Sharma, Advocate, representative for the respondent

ORDER

The present complaint has been filed by the complainants 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) seeking relief of issuing directions to the respondent/ promoter to refund the maintenance charges of Rs.1,12,918/- charged for the period w.e.f. 20.11.2023 to 30.09.2025 and to pay interest on the delayed period of possession i.e. w.e.f.

31.12.2022 till the delivery of valid and legal possession of the unit upon obtaining OC/CC in accordance with the provisions of RERD Act. Another direction has been sought to respondent for providing all the basic amenities including PSPCL connection, Club House, Car parking, Gym, regular security, clean water and hygiene services etc. It has also been submitted that the letter issued by the respondent for terminating and cancelling the possession letter dated **28.11.2023** be set-aside being invalid, illegal, unjust, unfair and uncalled for. It was thus submitted on behalf of the complainants that the basic sale price of the unit allotted was **Rs.58,50,000/-** plus other charges as applicable as per the allotment letter dated 30.11.2021 and an agreement for sale dated **25.11.2021** executed between them. As per sub clause 7.1 of the agreement the possession of the apartment was to be given on **31.12.2022** after obtaining completion/ occupation certificate as mentioned under clause 7.2. It was also agreed in the agreement that promoter shall be responsible to provide and maintain essential services in the project till the project was taken over by the Association of allottees. The offer of possession given by respondent was not valid as the apartment was not duly completed as per the terms and conditions of the agreement.

2. In reply, on the other hand, it has been submitted on behalf of the respondent/ promoter that the complaint of complainant itself was not maintainable one nor possession of the unit could be directed to be given to complainants. As per the agreement dated 25.11.2021 the possession of the unit was to be offered by **31.12.2022** subject to various *force majeure* conditions. The complaint in hand was for seeking possession of the unit alongwith interest prescribed thereupon

for delayed period. As the complainants were interested in taking possession, they were offered possession on **01.11.2023**. Since the complainants were seeking possession of the unit without Occupation Certificate, they took the possession on **18.01.2024** and also paid the maintenance charges. Complainants had paid a sum of **Rs.65,46,002/-** apart from other charges after offer of possession. All the amenities have already been provided in the project at the time of making offer of possession. There is thus no cause of action available with the complainants to file the present complaint which is liable to be dismissed. Moreover, respondent no.1 had also paid **Rs.5,38,906/-** to the complainants towards Assured return/ interest which amount is liable to be adjusted in case it was concluded that they deserve interest to be paid on delayed possession etc. Also, a settlement Agreement dated **16.12.2023** was executed between the parties whereby an additional compensation of **Rs.1,18,000/- as full and final settlement** was paid to the complainant over and above already paid Assured Return/Pre- EMI's which amount is also liable to be deducted.

3. The representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarized above. The authority has carefully considered the documents filed and the oral submissions made on behalf of both the parties.

4. It was submitted on behalf of the complainants by their learned counsel that despite having made all payments as per the agreement for sale, the respondent failed to handover possession of the unit by the agreed date i.e. **31.12.2022**. It was contended that possession was delivered only on **18.01.2024**, i.e. after a delay of more

than one year. It was then submitted that the Settlement Deed dated **16.12.2023** was executed under coercion and compelling circumstances, as the respondent refused to hand over possession unless the complainants agreed to sign the settlement document thereby forcing them to waive off their rightful claim of statutory interest under Section 18 of the RERD Act. Learned counsel for the complainants also dispute the applicability of the respondent's plea of *force majeure* arising out from the Covid-19 pandemic submitting that the lockdowns were temporary and restricted to limited periods during 2020 and 2021 and do not justify the delay of more than one year in handing over possession. It was lastly submitted on behalf the complainants that they be granted interest for the delayed period as per the provisions of Section 18 of the RERD Act, alongwith refund of excess payments, if any.

5. On the other hand, learned counsel for respondent submitted that the delay, if any, was due to force majeure conditions arising out from the Covid-19 pandemic, which led to disruption of construction work etc. The construction resumed immediately after restrictions were lifted, and the project was completed in due course. It was then submitted that the complainant voluntarily executed the Settlement Deed dated **16.12.2023** after due deliberation, wherein both parties mutually settled their accounts. As per the said settlement, compensation payable for the delay was adjusted, and the complainants accepted the same in full and final satisfaction of their claim, while waiving off their any right to raise further disputes. The present complaint, filed on **25.11.2024**, was an afterthought, devoid of merit, and an abuse of process. It was emphasized that the

complainants deliberately concealed the existence of the Settlement Deed dated **16.12.2023** while filing the complaint, thereby suppressing a material fact. Having voluntarily executed the Settlement Deed without any protest or legal notice alleging coercion, complainants was now estopped from reopening the matter or seeking any relief under the RERD Act.

6. Submissions and contentions of both complainants and respondent have been considered and examined in the light of facts and circumstances of the case emerging on record. The admitted and undisputed facts of the case reveal that the claimants were allotted the Apartment/ Unit R4-033/1 in the residential complex known as 'Sushma Valencia' developed by respondent vide allotment letter dated 30.11.2021. An agreement for sale was also executed between the parties on 25.11.2021. As per sub clause 7.1 of Clause 7 of the said agreement, the due date of possession of the said unit was stipulated as 31.12.2022. The complainants paid a total amount of Rs.66,17,058/- i.e. more than of the total sale consideration.

7. By way of their present complaint the complainants seek the relief of issuance of direction to respondent no.1 to pay interest on the delayed period till the delivery of possession or issuance of the Occupation Certificate as envisaged under the provisions of Section 18 of the Act apart from directing it to execute registered sale deed in their names and to provide all the basic amenities such as permanent electricity connection from PSPCL, Club House, Car parking place, Gym, regular security and hygiene services etc. along with necessary completion/ Occupation Certificate as agreed in the buyer's agreement as per provisions of the Act. Another direction with regard to refund of

the maintenance charges of Rs. 1,12,918/- charged for the period w.e.f. 20.11.2023 to 30.09.2025 has also been sought against the respondent company. So far as the direction with regard to payment of interest for the delayed period of possession u/S 18 of the Act is concerned, this bench more or less does not find itself in agreement with the contentions put forth on behalf of the complainants in view of peculiar facts and circumstances of the case. No doubt, that the right to claim interest on the delayed possession is an indefeasible and unqualified right given to an allottee by the statute as has been observed by the Hon'ble Apex Court in its land mark judgment titled **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.**, but in the case in hand complainants have not come before the Authority with clean hands since have suppressed a material fact having direct bearing on the relief sought for by them on the point of claiming interest for the delayed period. Although the right to claim interest for the period of delayed possession is a statutory right that cannot be defeated or taken away yet the settlement qua that has not been barred. It is also equally true that concealment of a material fact is a one thing while the effect of a material fact concealed in the case is other. It was only when the fact of settlement with regard to the statutory right of claiming interest by the complainants as per Section 18 of the Act is disclosed by the respondent side in its reply, the complainants pleaded that the alleged settlement was entered into under duress and undue influence of the promoter who was since threatening them to cancel the possession/ allotment of the unit. Whatever may be the case equity disfavors the complainants here as they have tried in a way to conceal the facts of concession having been

made to them by the promoter vide the said settlement. Otherwise also since the settlement specifically talks of the rights of complainants given to them u/S 18 of the Act it has definite bearing on that despite those rights being indefeasible one. It is also more or less settled that the relief of declaration and injunction are since 'discretionary' reliefs which cannot be granted in favour of a person who does not come to the court with clean hands. In the case in hand also complainants seek the injunction/ direction with regard to interest to be paid to them for the period possession has been delayed. The fact of settlement arrived at between them is a material fact having bearing on the matter which has been concealed by the complainants and they are thus guilty of suppression of a material fact. Otherwise also the settlement is another agreement that replaces the buyer's agreement on the issues involved that have been settled by way of that by the parties. Besides the right which is being claimed on account of interest payable by virtue of Section 18 of the Act also arises out of the default committed in making delivery of possession not in accordance with the agreement in a duly completed manner. Accordingly, it is found that complainants are not entitled to any payment of interest due to delayed possession.

8. So far as the other reliefs sought for by the complainants are concerned, this bench of Authority however finds their case well established as respondent company is under an obligation to fulfil its commitments made as per the buyer's agreement and other provisions of the Act. It is a settled position of law, as laid down by the Hon'ble Supreme Court of India and reiterated by various judicial forums including RERA Authorities, Consumer Commissions, and Hon'ble High Courts, that a builder/ developer cannot levy or demand

maintenance charges from allottees unless and until the Occupation Certificate has been duly obtained and handed over. Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. Vs. Govindan Raghavan 2019 (5) SCC page 725 clearly observed that the obligation to pay maintenance charges arises only when the possession is legally valid and supported by the necessary approvals including the Occupation Certificate. Demanding such charges without the OC amounts to unfair trade practice and deficiency in service. Accordingly in view of the aforesaid legal pronouncements the respondent/promoter is liable to refund the maintenance charges of Rs.1,12,918/- charged from the claimants for the period 20.11.2023 to 30.09.2025 and further not to charge any maintenance till the OC is received.

9. As an outcome of above discussion, the complaint is partly accepted and following directions are issued to the respondents:

1. to execute registered sale deed in favour of the complainants within a period of two months from the date of receipt of this order and to provide all the basic amenities alongwith the necessary completion/ Occupation Certificate as agreed in the buyer's agreement as per provisions of the Act;
2. to refund the maintenance charges of Rs.1,12,918/- to the complainants charged for the period 20.11.2023 to 30.09.2025. This amount shall be paid within 90 days as per Rule 17 of the Rules, 2017 from the date of receipt of this order.



**(Arunvir Vashista),
Member, RERA, Punjab**