

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

Complaint No. RERA/ GC No.0425 of 2024

Date of filing: 04.12.2024

Dated of Decision: **16.03.2026**

1. Chandra Thapa wife of Sh. Rajinder Singh Minhas;
2. Rajinder Singh Minhas  
Both residents of 78/1 Sushma Valencia, village Nagla, District SAS Nagar (Mohali), Punjab.

...Complainants

Versus

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.

... 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 pay interest on the delayed period of possession i.e. w.e.f. **21.11.2021** till the delivery of valid and legal possession of the unit upon obtaining OC/CC in accordance with the terms and conditions of the agreement for sale. 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 and show cause letter dated **20.11.2024** 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.74 lacs plus other charges as applicable as per the allotment letter dated **23.04.2019** and an agreement for sale dated **22.02.2019** executed between them. As per sub clause 7.1 of the agreement the possession of the apartment was to be given on **21.11.2021** 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 amount that stood paid up till then as has been mentioned in the demand letter dated 01.10.2024 was being shown as Rs.67,51,059/- against the total sale price of Rs.74 lacs. It has also been submitted that the unit was booked under the subvention plan scheme from the respondent and respondent/ builder was supposed to pay the amount of pre-EMIs to the Bank on the loan amount. But the respondent stopped paying pre- EMI all of a sudden for the months April 2020 to June 2020 without intimating to the complainant. 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 22.02.2019 the possession of the unit was to be offered by **21.11.2021** 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 **01.10.2024**. Since they did not come forward to take possession subsequent notices were sent to them on 20.11.2024, 23.11.2024 and 27.11.2024 for cancellation of their unit as well as possession. Complainants had paid a sum of Rs.67,51,059/- as demanded out of the total price of Rs.83,28,000/- apart from other charges and remaining amount at the time of offer of possession. All the amenities have already been provided in the project at the time of making offer of possession. But it were complainants who refused to take possession and backtracked from their own demand/request and filed the present complaint. It was only on account of failure of complainants to take possession of the unit its allotment was terminated/ cancelled. There is thus no cause of action available with the complainants to file the present complaint which is liable to be dismissed. Moreover, respondent had already paid **Rs.18,90,160/-** towards pre-EMI's which amount is liable to be adjusted in case it was concluded that they deserve interest to be paid on delayed possession etc.

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 paid a major amount of the total sale consideration of the unit in question, the respondent failed to handover possession of the unit by the agreed date i.e. **21.11.2021**. It was then contended that the letter issued by the respondent for terminating and cancelling the possession and show cause letter dated **20.11.2024** was invalid and illegal one which was liable to be set-aside. 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 in handing over possession. It was lastly submitted on behalf of 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.

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 R4-111/03 in the residential complex known as

'Sushma Valencia' developed by respondent vide allotment letter dated 23.04.2019. An agreement for sale was also executed between the parties on 22.02.2019. 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 21.11.2021 after obtaining completion/ occupation certificate. The complainants had paid a total amount of Rs.67,51,059/- i.e. more than 95% of the total sale consideration. Now the question that remains to be determined is whether the said cancellation done in the case is valid or not? The case of respondent company is that as complainants refused to take possession of the unit its allotment was terminated/ cancelled. Admittedly, there was an agreement dated 22.02.2019 executed between the parties that governed and contained the terms and conditions of the sale of flat. As such the cancellation if any could have been done by either of the parties to the agreement only according to that and that too in writing. As per Section 11 Clause 5 of the Act the promoter might cancel the allotment only in the terms of agreement for sale provided that the allottee in that case could approach the authority for relief, if he was aggrieved by such cancellation and such cancellation was not in accordance with the terms of agreement for sale, unilateral and without any sufficient cause. Hence the said cancellation when examined in the light of facts and circumstances of the case was not only an unilateral one but was also not in accordance with the terms of the agreement for sale what to talk of it being without any sufficient cause. Therefore, cancellation allegedly done was no cancellation in the eyes of law which can be allowed to be withheld or sustained.

7. So far as the offer of possession allegedly made by the respondent is concerned, it is found that there can be no valid offer on the part of builder/ respondent unless he has the OC and CC. It has not been shown also that at the time of making alleged offer to the complainants the builder possessed either completion certificate or occupancy certificate. Offer letter dated 01.10.2024 nowhere mentions if the builder had obtained the OC or CC and the unit was ready for taking over the possession.

8. Further admittedly there is a delay in delivery of possession and for which claimants are entitled to claim interest thereon for the period it is being delayed. The right of claiming interest on the delayed possession has been conferred upon an allottee by the provision of Section 18 of the Act which is an indefeasible right. Violation of Section 18(1) of the Act is therefore established; and the complainants are entitled to the relief provided therein. Section 18 speaks 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 an outcome of above discussion, the present complaint is partly accepted and the respondent is directed to pay interest on the amount paid by the complainants at the prescribed rate as per Rule 16 of the RERD Act 2017 i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% U/s 18(1) of the Act for the delay in handing over possession w.e.f. 21.11.2021 till the delivery of valid and legal possession of the unit upon obtaining OC/CC in accordance with the terms and conditions of the agreement for sale.

10. Since the respondent had already paid a total amount of Rs.18,90,160/- on behalf of the complainants towards pre-EMI's interest to the lender bank, the said amount shall be set off from the due amount.

11. The respondent is directed to make the above payment within 90 days from the date of receipt of this order as per Section 18 of Act, 2016 read with Rules 17 of the Rules, 2017. The said amount is to be collected as arrears of Land Revenue by the Competent Authorities as provided/authorized in the Punjab Land Revenue Act, 1887 read with section 40(1) of the Act, 2016. In case payment is not made within abovesaid period of 90 days, then Secretary of this Authority shall be issuing "Recovery Certificate" as per rules. The

complainant and the respondent are directed to inform the Secretary of this Authority regarding any payment received or paid respectively so as to take the same in to account before sending "Recovery Certificate" to the Competent Authority for recovery.



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