

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

Complaint No. 0453 of 2024
Date of Institution: 26.12.2024
Date of Decision: 08.05.2026

1. Supreet Pal Singh Rautela and
2. Chainika Negi

Both residents of Flat no. 101, 2nd Floor, Gurjivan Vihar, Dhakoli , SAS
Nagar-160104

....Complainants

Versus

1. Sushma Buildtech Limited, B-107, Ist Floor, Business Complete,
Elante Mall, Industrial Area, Phase-1, Chandigarh – 160002
2. HDFC Ltd, Unit no. 11/12 Gr Sushma Infinium, Zirakpur, Sahibzada
Ajit Singh Nagar (Mohali), Punjab, PIN Code Nagar, Mohali, Punjab-
140603

....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 Number: PBRERA-SAS79-PR0084)

Present: Shri Arun Sharma, Advocate for the complainants

Shri Sanjeev Sharma, and Shri Vishal Singal, Advocates
for respondent no.1

Shri Atul Goyal, Advocate for respondent no.2

ORDER

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 26.12.2024 by complainants as individuals against respondent seeking possession

of the allotted unit and interest for the period of delay in handing over valid possession.

2. The brief facts of the complaint as submitted by complainants are summarized below: -

2.1 Complainants has booked Unit N-502 on 5th floor, having carpet area 897.513 sq.st and super area 1485.Sq. Ft., type 3 BHK (1485) in project 'Sushma Crescent' vide application dated 03.04.2022. Allotment letter dated 26.04.2022 and Copy of the Agreement to sell dated 26.04.2022 are annexed as Annexure C-1 & C-2. Total sale price excluding GST is Rs.50,00,000/-. The complainants opted for construction linked plan to make the payments. As per clause 7.1 of the agreement to sell, the possession of the said flat was to be given on 31.03.2023. Till date no possession has not been handed over to complainants.

2.2 The complainants initially paid an amount of Rs.4,52,383/- at the time of booking i.e. on 03.04.2022, of the said flat and thereafter as per the demands raised by the respondent no.1, the complainants kept on paying the payments and till date they have paid an amount of Rs.44,99,261/-. Copies of the account Statement issued by the respondents are attached herewith as Annexure C-3.

2.3 The complainants entered into agreement with the respondents on 07/04/2023 and respondent had agreed to pay the compensation to the complainants on account of delay in possession of the said flat, at the rate of Rs.21,000/-per month from 01.04.2023 to till the offer of possession. However, nothing is being paid to the complainants from September 2024 onwards. Copy of the agreement dated 07.04.2023 is attached herewith as Annexure C-4.

2.4 The complainant made part payment and for remaining payment availed the loan facility from HDFC bank. Further, the complainants have been

regularly paying the EMI's for the loan availed by them and on the other hand the complainants are also paying the rent of their rented house where they are presently residing. The complainant had invested his hard earn money with the respondent/builder but as on date the respondent had failed to give the possession of the unit.

3. Prayer of complainants is that the respondents be directed to handover the possession of the unit, to pay the interest as per the provision of act for the delay caused till valid handing over the possession of unit and to refrain from giving effect to unfair clauses unilaterally incorporated in the Builder Buyer Agreement.

4. Upon notice, respondent appeared through Shri Sanjeev Sharma, Advocate and submitted reply dated 28.06.2025 which is summarized below:

4.1 The respondent stated that the complainants had agreed to purchase a Residential Unit No. N-502 on 5th Floor of the housing complex known as "Sushma Crescent" located at Village Gazipur & Kishanpura, Zirakpur, District SAS Nagar, Mohall, Punjab, through an application dated 03.04.2022. Subsequently, the said unit was allotted to the complainants vide Allotment Letter dated 26.04.2022, for a Basic Sale Price of Rs 50,00,000 /- (Rupees Fifty Lakhs Only), excluding applicable taxes and other charges. The complainant also executed an Agreement for Sale on 26.04.2022. As per the agreement possession of the said unit was to be delivered on 31.03.2023, subject to timely payments by the complainants and delays caused by force majeure conditions. The delays caused by the complainant's untimely payments have also contributed to the overall delay in the project, which is evident from the delayed payments made by the complainant.

4.2 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. So delay due to Covid-19 is to be excluded and possession date is to be extended by 9 months i.e. 23.03.2024. That Hon'ble SCDRC Chandigarh has also accepted the Notification issued by government of India declaring Covid-19 as Force Majeure and agreed to extension of 9 months to date of possession due to timeline granted in agreement, due to force majeure event of Covid-19.

4.3 The counsel of the respondent submitted that the Hon'ble Apex Court has also held that three years is a reasonable time for offering of possession after construction of Unit and any delay beyond 3 years is unreasonable. In the present complaint the agreement was executed on 26.04.2022 and possession was to be delivered on 31.03.2023 and period of 3 years would expire on 26.04.2025 and thus the delay, if any, is not unreasonable.

4.4 The respondent stated that the complainants have already been duly compensated for the alleged delay in possession through a duly executed *Settlement Agreement* dated 07.04.2023, which is annexed herewith as Annexure R-5. The said Settlement Agreement has been voluntarily entered into by the complainants. Under the terms of the Settlement Agreement, the complainants were paid a delay compensation of Rs.21,000/- per month up to the date of offer commencing from 01.04.2023. Moreover, the complainants were charged with delayed payment interest to the tune of Rs. 69,531/- accrued to the complainant's account due to delay payment. In terms of the amicable settlement arrived at, the delay payment interest of Rs.17,382/- was also adjusted against delayed payment interest and Rs. 52,149/- considered for waiver as one time goodwill gesture and the complainants have unconditionally accepted the said settlement. The complainants have already been duly compensated for the alleged delay in possession through substantial monetary payments, aggregating to

Rs.3,60,618/-

4.5. The complainants have availed a housing loan facility from HDFC Limited (Respondent No. 2) for the purchase of the property in question. A *Tripartite Agreement* between the complainants, the HDFC Limited, and the answering respondent has been executed on 26.04.2022 (Annexure R-7).

5. Respondent no.2 i.e. HDFC Bank Ltd submitted that on 28.06.2022, the Complainants availed a Resident Home Loan-Variable Rate-Monthly Rest of Rs.40,00,000/- from the answering Respondent Bank against the loan account No.676355649. Out of the said amount, Rs.35,00,000/- was disbursed. The true copy of the Loan Agreement dated 28.06.2022 along with the MITC is annexed herewith as Annexure R-2/2. The copy of the loan account statement is attached as Annexure R-2/3. The Respondent bank has been filing the reply on the information available as per the records and there is neither any specific averment against the bank nor any relief has been sought against the bank by the Complainants in the present petition.

6. Both the Counsel for the complainant as well as respondent addressed their respective arguments on 23.04.2026.

7. Learned Counsel for the complainant argued that they were allotted a residential Unit No. N-304 on 3rd floor having total area of 1485 vide Allotment letter dated 17.09.2020 in the project "Sushma Crescent" by respondents. Thereafter, an agreement was also entered into between the parties on 26.04.2022 and as per Clause 7.1 of the said Agreement, possession was to be delivered on 31.03.2023, but the respondent failed to do so. The complainants have paid Rs.50,40,000/- (including taxes) against the agreed price of Rs. 56,91,746/- including GST, IFMS and other charges. 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.

8. Counsel for respondent while reiterating the contents of his reply dated 28.06.2025 to justify the delay in delivery of possession stated that the Hon'ble Apex court has also held that three years is a reasonable time for offering of possession after construction of unit and any delay beyond 3 years is unreasonable and period of 3 years would expire on 26.04.2025 and prayed that there is no cause of action arose in favour of the complainant to file the instant complaint and prayed that the instant complaint be dismissed with costs.

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

9.1 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 31.03.2023. It is established on record that till today possession of unit has not been handed over to the complainant. The plea of the respondent that the possession date will be within 3 years of the agreement is not acceptable, as per para 7.1 of the agreement dated 26.04.2022 the date of possession is clearly mentioned as 31.03.2023. 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.

9.2 Upon further scrutiny of the documents placed on record, particularly *Annexure R-5* appended with the respondent reply, it is observed that the complainants had already entered into a 'Settlement Agreement' with the Respondent. Under the terms of the Settlement Agreement, the complainants were paid a delay compensation of Rs. 21,000/- per month up to the date of offer commencing from 01.04.2023. Delayed payment interest amounting

Rs.52,149/- has been considered for waiver as on time goodwill gesture. Furthermore, it was specifically agreed between the parties that the complainants shall not raise any further claim or demand for any compensation whatsoever, and shall refrain from initiating or pursuing any complaint, case, or legal proceeding against the respondent in any forum, including the present one. The complainants submitted that the compensation amount of Rs.21,000/- has been received till, September, 2024.

9.3 The act of executing this settlement voluntarily and accepting compensation thereunder conclusively demonstrates that both parties had amicably resolved their disputes. Consequently, any subsequent attempt by the complainants to reopen the issue of interest or seek further compensation for delay lacks legal sanctity and contravenes the settled principle that once a matter is finally settled, the parties are bound by its terms. A registered affidavit is a document which is voluntarily made written statement given on oath which is legally formalized by notary.

9.4 Once a matter has been mutually settled and the complainants have accepted the benefits arising therefrom without any protest, the principle of *estoppel* squarely applies. Entertaining any subsequent claim for additional interest or compensation would not only undermine the sanctity of the concluded settlement but would also amount to reopening a matter that has attained finality. The present complaint, therefore, has all the ingredient to manifest that it is an afterthought, filed subsequent to adjustment of the amount already settled and accepted by the complainants themselves.

9.5 Regarding the pandemic of Covid19, due to which respondent was not able to give possession of the unit to the complainants is without any substance as the date of agreement was 26.04.2022 and the pandemic period started from March 2020. It is noteworthy that the agreement was executed on 26.04.2022 after the occurrence of Covid-19. If respondents can execute the agreement and accept the amount for the unit on

26.04.2022, then they are liable to hand over possession on time as prescribed in the agreement dated 26.04.2022.

10. As a result of the above discussion, this complaint is partly accepted. The undersigned is of the considered view that complainant is entitled for the receipt of interest from the respondent 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."

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

11.1 As a net result of the above discussion, this complaint is accordingly allowed and respondent is directed 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 of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainant i.e. Rs.50,40,000/- w.e.f. 01.10.2024 the date from which respondent has stopped to make payment of Rs. 21,000/- per

month as per terms of settlement agreement dated.07.04.2023 till date of order in the first instance 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.

11.2 The calculation of interest up to 08.05.2026 is calculated as under:

| Interest from | Principal amount | Interest calculated till | Rate of Interest | No. of days | Interest amount |
|---------------|------------------|--------------------------|------------------|-------------|-----------------|
| 01.10.2024 | 50,40,000 | 08.05.2026 | 10.80% per annum | 577 | 806469 |
| | 50,40,000 | | | | 806469 |

The arrear of interest amounting Rs.8,06,469/- would be paid 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 the compliance report.

11.3 As per record, respondent has neither furnished any Completion/Occupation Certificate from the competent authority nor offer any possession of unit to complainant so far. Further, respondent is directed to obtain completion certificate/ occupation certificate at the earliest and hand over the possession of unit immediately. Respondent is also directed to pay interest @10.80%pa (i.e.45,360/- per month) on amounting Rs.50,40,000/- paid by the complainant from date of issue of this order i.e. 08.05.2026 to the date of delivery of possession after obtaining completion certificate/ occupation certificate of the flat bearing No. 502 having carpet area 897.513 sq.st and super area 1485.Sq. Ft., type 3 BHK (1485) on 5th floor in tower 'N ' in the project namely "Sushma Crescent" located at Kishanpura, Hadbast no. 54, Sub Tehsil Zirakpur, Tehsil Derabassi, District SAS Nagar Punjab or two months after getting the completion certificate by competent authority whichever is earlier.

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

Binod
08/05/26

(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab