

**SHRI ARUNVIR VASHISTA, MEMBER
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No. GC No.0455 of 2024
Date of Institution: 26.12.2024
Dated of Decision: 14.10.2026

Maj. Dr. Shamsheer Singh Chauhan (Deceased) through his
Legal Representatives: -

1. Prof. Sanchita Chauhan;
2. Dr. Sandeep Chauhan;
3. Dr. Santosh Chauhan;

All residents of House No.126-A, Sector 6 Panchkula
(Haryana)

...Complainants

Versus

1. Suksha Developers Pvt. Ltd. B-107, First Floor, Business Complex at Elante Mall, Ind. Area, Phase-1 Chandigarh.
2. Bharat Mittal, B-107, First Floor, Business Complex at Elante Mall, Ind. Area, Phase-1 Chandigarh.
3. Binder Pal Mittal, B-107, First Floor, Business Complex at Elante Mall, Ind. Area, Phase-1 Chandigarh.

...Respondents

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

Present: Complainants Sanchita Chauhan and Dr. Sandeep
Chauhan in person
Respondents exparte

ORDER

The present complaint has been filed by the legal representatives of Late Maj. Gen. Dr. Shamsheer Singh Chauhan under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), seeking, inter alia, execution of the Agreement for Sale and transfer of Complete Business Unit No. 12 (hereinafter referred

to as "CBU No. 12") in the project "Sushma Empiria", payment of assured returns/interest for the period of delay, refund of the amount allegedly recovered in excess on account of shortfall in carpet area and other consequential reliefs.

2. The case of the complainants, in brief, is that Late Maj. Gen. Dr. S.S. Chauhan had booked CBU No. 12 with the respondents. The unit was represented to comprise the Ground Floor with Basement, First Floor and Second Floor and to be a standalone commercial unit having frontage on a 200-feet-wide road. The complainants have relied upon the communications, layout plans, advertisements, calculation sheets and payment plan issued by the respondents in support of the representations made at the time of booking. The booking was made on 29.01.2020 against payment of Rs.5,00,000/-. According to the complainants, the deceased allottee thereafter paid the entire Basic Sale Price of Rs.3,81,00,000/- between 29.01.2020 and 17.06.2020. It is their specific case that despite receipt of the entire Basic Sale Price, no written and registered Agreement for Sale was executed between the parties. The project was registered with the Authority only on 04.01.2021. It is further the case of the complainants that during the relevant period the respondents had submitted building plans depicting development materially different from the representations made at the time of booking. The deceased allottee expired on 22.11.2020. Thereafter, the complainants submitted the requisite documents establishing their status as legal representatives on 25.03.2022. According

to the complainants, despite verification of the said documents, the respondents neither executed the Agreement for Sale nor transferred the unit in their favour. They have then relied upon the payment plan and written communications issued by the respondents whereby assured returns of Rs.4,44,500/- per month, stated to correspond to 12% per annum on the Basic Sale Price, were represented to be payable till possession. According to the complainants, the assured returns were discontinued with effect from 01.04.2021. They have also alleged that the carpet area represented at the time of booking was 5,040 sq. ft., whereas the carpet-area particulars subsequently disclosed by the respondents indicate a lesser area. The alleged shortfall has been calculated at approximately 817 sq. ft., corresponding to an amount of approximately Rs.69,23,087/-.

3. In view of the facts mentioned above, the complainants pray for the following relief(s): -

A. To Transfer & handover CBU No. 12 (comprising of ground floor with basement, first floor and second floor) presently located in Tower T-1 in Sushma Empiria project in the names of legal heirs (complainants) of Late Sh. S.S. Chauhan.

B. To pay delayed interest till possession is handed over.

C. To duly sign & place on record fully filled Agreement for Sale (after removal of unilateral terms &

conditions), adhering to terms & conditions committed at the time of booking.

D. Resumption of monthly assured return of Rs. 4,44,500/- w.e.f. 01.04.2021 till actual physical possession of CBU No.12 handed over, along with interest @24% p.a. (u/s 2(z) RERA Act, Respondent's demand same in SE/PP/004A) w.e.f. 01.04.2021 till it is resumed.

E. To refund around Rs. 69,23,087/- overcharged for carpet area from Late Sh. S. S. Chauhan along with interest @24% p.a.

F. For luring Late Sh. S.S. Chauhan into booking & investing entire BSP, based on misleading advertisement of said project, Respondent's be penalised to transfer without any additional costs/terms & conditions 3rd, 4th & 5th floors of CBU No. 12 to complainant's or pay Rs One Crore.

G. Debarring Respondent's from levying any additional charges during Registration and for the free parking committed during booking.

H. Imposing penalty for violating sections of RERA Act 2016 or as the Hon'ble court deems fit.

I. Respondents be directed not to deduct TDS at source during above payment as promoter buyer relationship does not spell out a debtor creditor relationship as defined in section 2(28A) of Income Tax Act

4. Notice of the complaint was duly served upon the respondents. The respondents entered appearance and filed a detailed reply. The reply, therefore, forms part of the record and has been duly considered while adjudicating the present complaint. The respondents, inter alia, denied the allegations of the complainants and pleaded that the complaint was based upon suppression of material facts and misrepresentation. They then pleaded that Late Maj. Gen. Dr. Shamsheer Singh Chauhan had booked three commercial units bearing Nos. GF-12 (+BF), FF-12 and SF-12 in Tower-A of the project and that the three units were subsequently treated as a composite Complete Business Unit No.12. It was pleaded that the actual amount received towards the Basic Sale Price was Rs.1,47,00,000/- and not the amount claimed by the complainants, and that the remaining receipts relied upon by the complainants related to proposed bookings of additional units which were never finalized. The respondents submitted that finally an Offer Letter dated 16.06.2020 was issued whereby the three units were treated as one consolidated commercial unit and the Basic Sale Price was mutually agreed at Rs.1,47,00,000/-. According to the respondents, a discount of Rs.43,76,445/- was extended to the deceased allottee and disbursed to him by way of monthly payments between 25.06.2020 and 31.03.2021. The respondents contended that these payments were not assured returns but constituted discount in connection with proposed additional purchases. They thus pleaded that the assured date of possession was

mutually agreed as 31.12.2027 and that no assured returns, discounts or other monetary benefits were payable beyond 31.03.2021. The respondents also relied upon their statement of account and other documents in support of their version. They additionally pleaded that after the demise of the deceased allottee, his legal heirs submitted an application dated 25.03.2022 for transfer of CBU No.12 in their joint names, supported by indemnity bonds, affidavits and surety documents. According to the respondents, the said documents themselves recorded payment of Rs.1,47,00,000/- towards the Basic Sale Price. They then pleaded that the project was duly registered under the Act and that the agreed timeline for completion and possession was 31.12.2027. They denied the allegations relating to deviations from sanctioned plans and asserted that the complainants were liable to comply with the agreed terms. The respondents further sought refund of Rs.43,76,445/- allegedly paid as discount and return of the advance receipts relating to proposed additional units.

5. The respondents thereafter pleaded no instructions through their counsel and withdrew their Vakalatnama. They were afforded an opportunity to appear personally or through another counsel. Despite such opportunity, neither the respondents nor any counsel appeared on their behalf. Consequently, the respondents were proceeded against ex parte vide order dated 17.07.2026. The fact that the respondents were subsequently proceeded against ex parte does not, however, render their previously filed reply non-

existent or irrelevant. The pleadings and documents already brought on record have been considered to the extent they are relevant and legally admissible. The complainants, nevertheless, remain required to establish their entitlement on the basis of the material available on record. The following questions arise for determination:

- i. Whether the respondents accepted amounts towards booking/purchase of CBU No.12 in violation of Section 13 of the Act?
- ii. Whether the respondents are liable to execute a written and registered Agreement for Sale after having accepted the sale consideration?
- iii. Whether, on the basis of the documentary material on record, the complainants are entitled to the assured-return/assured-payment commitment?
- iv. If the complainants are entitled to assured returns, whether such entitlement can be granted cumulatively with statutory interest under Section 18 for the same period?
- v. Whether, in the absence of a specified possession date in a duly executed Agreement for Sale, a reasonable period of three years can be taken for determining the date from which delay under Section 18 commenced?
- vi. Whether the complainants are entitled to refund of any amount on account of alleged shortfall in carpet area?



vii. To what relief are the complainants entitled?

6. This bench of Authority has carefully considered the rival contentions of both the parties and perused the material available on record. The material available on record establishes that CBU No.12 was booked on 29.01.2020 and that substantial, and according to the complainants the entire Basic Sale Price, was received by the respondents by 17.06.2020. Significantly, no duly executed and registered Agreement for Sale has been produced by the respondents. Section 13 of the Act prohibits a promoter from accepting more than ten per cent of the cost of an apartment, plot or building, as the case may be, as an advance or application fee, without first entering into a written Agreement for Sale with the person intending to take the apartment, plot or building. The statutory requirement is intended to ensure that the rights and obligations of the promoter and allottee are crystallized before substantial consideration is received. In the present case, the respondents accepted substantial consideration without demonstrating execution of a duly executed Agreement for Sale in accordance with the Act. The subsequent issuance of an Offer Letter or reliance upon applications, affidavits, indemnity documents or internal statements of account cannot substitute the statutory Agreement for Sale contemplated by Section 13. The plea of the respondents that the Offer Letter dated 16.06.2020 constituted the commercial understanding between the parties does not answer the statutory requirement. An internal or commercial understanding cannot



be permitted to dilute the mandatory statutory protection available to an allottee under the Act. Accordingly, the respondents are held liable for non-compliance with Section 13 of the Act and are directed to execute the requisite Agreement for Sale in accordance with the Act, the Rules and the sanctioned plans.

7. The complainants have placed reliance upon the payment plan and written communications issued by the respondents whereby assured returns of Rs.4,44,500/- per month, equivalent to 12% per annum on the Basic Sale Price, were represented to be payable till possession. The respondents have attempted to characterize the monthly payments made between 25.06.2020 and 31.03.2021 as discounts extended in connection with proposed additional purchases. However, after considering the documentary material relied upon by the complainants and the respondents' own pleading regarding the monthly payments, the Authority finds that the monetary arrangement represented to the deceased allottee constituted a financial commitment associated with the transaction. The subsequent unilateral discontinuation of such payment with effect from 01.04.2021 cannot, by itself, extinguish a subsisting contractual/commercial commitment, particularly when the respondents have not produced any duly executed document demonstrating a lawful variation of the said commitment accepted by the allottee. The complainants, being the legal representatives of the deceased allottee, are entitled to pursue



the subsisting rights arising from the transaction. The respondents cannot defeat such rights merely on account of the subsequent demise of the original allottee. Accordingly, the complainants are held entitled to the assured-return commitment established from the documentary material on record, subject, however, to the adjustment of all amounts already paid under the same head.

8. The Authority is conscious that the complainants have also claimed statutory interest on account of delay in handing over possession. The entitlement to assured returns and the entitlement to statutory interest under Section 18 arise from different legal sources. The former arises from the financial commitment forming part of the transaction, whereas the latter is a statutory consequence of failure of the promoter to complete the project or give possession in accordance with the applicable possession obligation. However, the fact that the two claims arise from different sources does not mean that the allottee can receive two identical monetary benefits for the same period merely because they are described differently. The object of the monetary relief under Section 18 is to protect the allottee against the consequences of the promoter's failure to give possession within the stipulated or legally determined period. Therefore, where assured returns are contractually payable even during the period of delay and are intended to compensate the allottee for continued use of his money by the promoter, the Authority must ensure that there is no duplication of recovery for the same period. The appropriate course is to

give credit for the amount paid under the assured-return arrangement and, for the period for which statutory delayed-possession interest becomes payable, to ensure that the complainants receive the monetary benefit lawfully due to them without permitting double recovery. In the present case, the assured returns were discontinued from 01.04.2021. The reasonable period for completion and possession, as determined hereinafter, expires only in January 2023. Accordingly, the complainants' entitlement to assured returns shall operate for the period from 01.04.2021 up to the expiry of the reasonable possession period, after adjustment of the amounts already paid. Thereafter, the statutory consequence of delay under Section 18 shall operate. The complainants shall not simultaneously recover assured returns and Section 18 interest for the identical period. This adjustment is necessary to prevent unjust enrichment and double recovery while preserving the substantive entitlement flowing from both the contractual arrangement and the statute.

9. Section 18(1) of the Act provides for payment of interest where the promoter fails to complete or is unable to give possession in accordance with the terms of the Agreement for Sale or, as the case may be, by the date specified therein. In the present case, however, there is no duly executed Agreement for Sale containing a specific and enforceable date for handing over possession. The respondents have relied upon the Offer Letter dated 16.06.2020 and have pleaded that the agreed date of

possession was 31.12.2027. The said plea cannot be accepted as a contractual possession date for the purpose of Section 18. The respondents cannot rely upon an alleged possession date contained in a commercial understanding while simultaneously failing to execute the statutory Agreement for Sale required under Section 13. More importantly, the statutory obligation to execute the Agreement for Sale cannot be defeated by relying upon an unregistered or informal arrangement to postpone the promoter's obligation for an indefinite period. The absence of a specified possession date, however, does not mean that the promoter is entitled to retain the allottee's money indefinitely without an obligation to complete the project. A reasonable period has therefore to be determined from the circumstances of the transaction. The Hon'ble Supreme Court in **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. v. Trevor D'Lima & Ors., (2018) 5 SCC 442**, while considering a case where no delivery period had been stipulated, observed that a reasonable time has to be taken into consideration and held, in the facts of that case, that a period of three years would have been reasonable for completion of the contract. The aforesaid principle has also been applied in subsequent adjudicatory proceedings where the parties had not executed a document containing a specific possession date. In **Dharminder Singh Sidhu v. Manohar Infrastructure & Constructions Pvt. Ltd.**, the State Consumer Commission, Chandigarh, relying upon **Fortune Infrastructure**, treated three years from the date of booking as

a reasonable period where no specific date of possession was available. Applying the aforesaid principle to the present case, the booking of CBU No.12 was made on 29.01.2020. In the absence of a validly executed Agreement for Sale containing a specific possession date, a period of three years from the date of booking is considered a reasonable period for completion and lawful offer of possession. Accordingly, the reasonable date by which possession ought to have been offered is 28.01.2023, and the respondents' failure to offer lawful possession thereafter constitutes delay for the purposes of Section 18. Consequently, statutory interest under Section 18 shall commence from 29.01.2023 and continue till the date of actual and lawful handing over of possession. It is clarified that the period of three years is not being treated as a contractual possession date. It is being adopted only as a reasonable period for determining the commencement of statutory delay in the peculiar circumstances of the present case, where the respondents failed to execute the Agreement for Sale and no enforceable possession date is available from such agreement.

10. The complainants have alleged that the carpet area represented at the time of booking was 5,040 sq. ft., whereas the subsequently disclosed carpet area is substantially less, resulting in an alleged shortfall of approximately 817 sq. ft. and a corresponding claim of approximately Rs.69,23,087/-. Carpet area has a specific statutory meaning under the Act. The promoter cannot recover consideration from an allottee for an area which is not lawfully includable in the carpet area in

accordance with the statutory definition. At the same time, the exact amount payable under this head cannot be determined merely on the basis of an approximate calculation. The amount must be founded upon the authenticated carpet area reflected in the sanctioned plans and relevant project records. Accordingly, the respondents shall furnish the sanctioned/approved plans and authenticated area statement of CBU No.12, including the treatment of the basement/stores area, and shall furnish a complete calculation showing the amount, if any, recovered in excess on account of the alleged discrepancy. Any amount found to have been recovered in excess shall be refunded to the complainants in accordance with law.

11. The deceased allottee paid substantial consideration towards CBU No.12 and the respondents failed to execute the statutory Agreement for Sale. The respondents cannot be permitted to take advantage of their own failure to execute the Agreement for Sale and thereafter contend that the complainants have no enforceable possession date. The respondents' plea that the possession date was 31.12.2027 is also not acceptable as a contractual possession date in the absence of a duly executed Agreement for Sale incorporating such term. The respondents may have relied upon such date in their reply, but an assertion in a pleading cannot itself create a contractual term which the promoter was statutorily bound to incorporate in a written Agreement for Sale. At the same time, the respondents' reply and documents cannot be ignored

merely because they were subsequently proceeded against ex parte. The Authority has considered their defence, including their plea concerning the amount received, the alleged discount, the Offer Letter dated 16.06.2020 and the alleged possession date of 31.12.2027. The complainants' entitlement has been determined after considering the record as a whole. The Authority accordingly finds that the complainants are entitled to execution of the Agreement for Sale and completion of the transfer of CBU No.12, together with the monetary reliefs determined herein. The monetary reliefs shall, however, be subject to appropriate adjustment so that the complainants do not receive duplicate compensation for the same period.

12. In view of the findings recorded above, the complaint is **allowed** in the following terms:

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- i. The respondents shall execute the requisite written and registered Agreement for Sale in respect of CBU No.12 in the project "Sushma Empiria" in favour of the complainants/legal representatives of the deceased allottee, in accordance with the Act, the Rules and the sanctioned plans.
 - ii. The respondents shall complete all lawful formalities necessary for transfer of CBU No.12 in favour of the complainants and shall not impose any condition contrary to the provisions of the Act or the statutory rights of the complainants.
 - iii. The respondents shall pay the complainants the assured returns at the rate established from the

documents on record, namely 12% per annum on the Basic Sale Price of Rs.3,81,00,000/-, for the period from 01.04.2021 to 28.01.2023, after giving full credit for all amounts already paid under the head of assured returns/discounts.

iv. The complainants shall be entitled to statutory interest under Section 18 of the Act at the rate prescribed under the Punjab State Real Estate (Regulation and Development) Rules, 2017, on the amount lawfully paid towards the unit, commencing from 29.01.2023 and continuing till the date of actual and lawful handing over of possession.

v. The respondents shall not be liable to pay assured returns and Section 18 interest cumulatively for the same period. Any amount already paid towards assured returns/discounts relatable to the period for which statutory interest is claimed shall be duly accounted for and adjusted so as to prevent double recovery.

vi. The respondents shall furnish to the complainants, within 30 days from the date of receipt of a certified copy of this order, the sanctioned/approved plans and an authenticated statement of the carpet area of CBU No.12, including the treatment of the basement/stores area, together with a complete calculation of the consideration attributable to the legally permissible carpet area.

vii. Upon such verification, any amount found to have been recovered in excess on account of the difference between the represented/chargeable carpet area and the actual permissible carpet area shall be refunded to the complainants, together with applicable interest in accordance with the Act and the Rules.

viii. The respondents shall issue a fresh and lawful offer of possession of CBU No.12 to the complainants after completing the requisite statutory and project formalities and in accordance with the sanctioned plans and applicable law.

ix. Any unilateral or one-sided term contained in an application form, affidavit, indemnity bond, Offer Letter or any other document, insofar as it is inconsistent with the provisions of the Act or has the effect of defeating or diluting the statutory rights of the complainants, shall not be enforced against them.

x. The aforesaid directions, except direction (vi), shall be complied with within 60 days from the date of receipt of a certified copy of this order. Direction (vi) shall be complied with within 30 days.

xi. In the event of failure to comply with the monetary directions contained in this order within the stipulated period, the complainants shall be entitled to avail the remedies of execution/recovery in accordance with the provisions of the Act and the Rules.



13. It is further clarified that the amount of Rs.43,76,445/- referred to by the respondents as having been paid by way of discount/monthly payments shall be duly accounted for in the statement of account and adjusted only to the extent that it represents amounts actually paid to the complainants under the assured-return/discount arrangement. Any claim of the respondents for independent recovery of the said amount, beyond the adjustment expressly permitted herein, shall have to be established in appropriate proceedings in accordance with law.

14. The parties shall intimate the Secretary of the Authority regarding compliance with this order and any payment made or received pursuant thereto, so that the same may be duly accounted for at the stage of execution/recovery.



15. On expiry of ninety days if the decree remained uncompiled with after verification and determination of the amount actually outstanding, the **Secretary, RERA Punjab**, shall issue a **Recovery Certificate** in respect of the outstanding amount alongwith allowed interest calculated thereon against the respondents and forward the same to the **competent District Collector/revenue recovery authority having jurisdiction over the respondents**, for recovery of the decretal amount as **arrears of land revenue**, in accordance with Section 40 of the Act of 2016 and Rules 24 and 25 of the Punjab Rules, 2017. The complainant and the respondents shall intimate the Secretary, RERA Punjab, regarding any payment made or received after issuance of the present order,

so that the same may be duly accounted for and unnecessary duplication in recovery may be avoided. The competent revenue recovery authority shall take necessary steps for recovery of the certified amount in accordance with the applicable provisions governing recovery of arrears of land revenue and shall furnish a compliance report to this Authority. In case of any further payment by the respondents after issuance of the Recovery Certificate, the same shall be duly taken into account and the recovery proceedings shall stand modified to that extent. The matter shall be placed before the Secretary/Registry for compliance and for taking necessary steps for issuance and transmission of the Recovery Certificate in accordance with this order.

16. Before this bench departs from its judgment it strongly feels to initiate proceedings against the respondents under Chapter VIII of the Act for violating the statutory provisions of Section 13(1) i.e. accepting more than 10% of the sale consideration without executing registered Agreement for sale in favour of the deceased allottee. Accordingly, Secretary of this Authority is directed to initiate appropriate proceedings against the respondent/promoter under Section 61, read with Section 13(1) of the Act. The complaint stands disposed of in the above terms. A copy of this order be supplied to the parties as per rules.


(Arunvir Vashista),
Member, RERA, Punjab