

**BEFORE SHRI RAJINDER SINGH RAI, ADJUDICATING
OFFICER, THE REAL ESTATE REGULATORY AUTHORITY,
PUNJAB PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR
18A, MADHYA MARG, CHANDIGARH.**

Complaint No.AdC No.0014 of 2024

Date of Institution:17.01.2024

Date of Decision:30.07.2025

1.Lohit, Resident of House No.534/6, Onkar Nagar, Tibri Road, Gurdaspur, Punjab Pin Code 143521.

2.Richa Salhotra, Resident of House No.534/6, Onkar Nagar, Tibri Road, Gurdaspur, Punjab Pin Code 143521.

.....Complainants

Versus

1. ATS Estate Pvt. Ltd, 711/92, Deepali, Nehru Place Central Delhi, Delhi, Pin Code 110019.

2. ATS Infrastructure Ltd, 711/92, Deepali, Nehru Place, Central Delhi, Delhi Pin Code 110019

3. Dynamic Colonizers Pvr. Ltd, 711/92, Deepali, Nehru Place, Central Delhi, Delhi Pin Code 110019

4. HDFC Ltd., SCO 153-155, Madhya Marg, Chandigarh, Chandigarh Pin Code 160008

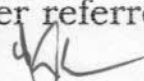
.....Respondents

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

Present: Mr.Vipin Kumar Advocate, for the complainants.
Mr.Hardeep Saini Advocate for respondents No.1 to 3
Mr. Vaibhav Singh Tara, Advocate, for respondent No.4.

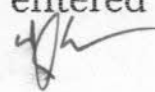
ORDER

The present complaint has been filed by complainants, under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act)



against the respondents, seeking compensation on account of delay in handing over possession of apartment in the project "ATS Gold Meadows Lifestyle" at Village Madhopur Derabassi Mohali, Punjab.

2. As per case of the complainants, on 29.02.2016, they booked an apartment bearing no. 8031, on 3rd Floor, of Tower No. 8, having Super Area of approx 1350 Square feet with the respondents @ Rs.36,07,500/- as total Price at "ATS Golf Meadows Lifestyle" situated at village Madhopur, Derabassi, Mohali, Punjab. It is submitted that it was informed to the complainants that the said project has all approvals and sanctions from the competent authorities in the name of respondents no. 2 & 3 and the development is being carried out in full swing and the apartment shall be ready for the possession within 3.5 years. Further, complainants paid an amounts of Rs.3,50,000/- and Rs.2,50,000/- on 15.03.2016 through cheques dated 29.02.2016 & 15.03.2016 respectively, copies of payment receipts are attached as Annexure C/1. It is also submitted that on dated 25.03.2016, the respondents issued allotment letter and also entered into buyer's agreement on the same date. As per agreement, possession of the apartment was to be handed over within 42 months i.e on or before 25.09.2019, copies of allotment letter and buyer's agreement both dated 25.03.2016 are attached as Annexures C/2 & C/3 respectively. It is further averred that on dated 14.04.2016, the complainants entered into tripartite

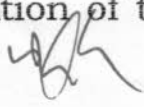


agreement with respondent no. 1 and respondent no. 4 i.e. HDFC Bank for housing loan for the above apartment, and respondent no. 4 sanctioned the loan of Rs.28,46,560/- and released Rs.11,22,828/- to the respondent No.1 on dated 28.04.2016 and a total amount of Rs.17,22,828/- had been paid to respondent No.1. Complainants further submitted that copy of permission to mortgage, tripartite agreement, loan payment receipt/screen shot are attached as Annexures C/4 to C/6 respectively. That now the complainants are paying PEMI @ Rs.59,645/- per month to the respondent No.4 @11.65% per annum, hence the complainants had paid more than Rs.7,65,217/- towards PEMI including principal and interest and the payment is continuing. Further, it is averred that the complainants many times asked the respondents that development was going on very slow speed at the site and now the work was almost stopped. But the respondents assured the complainants that the possession would be handed over in the month of September 2019. Thereafter, the complainants again visited the project site in the month of September, 2019 and were shocked that no work was going on and there was no possibility of handing over the possession in near future. It is also averred that even today the completion of project is too far. That the complainants have lost confidence in the project of the respondents and hence wish to withdraw from it. The respondents gave false information to the complainants about the project and its completion and as such, the respondents

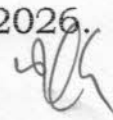
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have violated Section 18 of the Act. So present complaint has been filed under Section 31 of the Act for granting compensation on account of mental agony, harassment and Rs,50,000/- as litigation costs.

3. Upon notice respondents No,1 to 3 appeared and filed written reply, taking preliminary objections that the complainants have no cause of action to file the present complaint under the provisions of the Act, as the completion of the Project has been declared to be 9 years from the date of the registration; the complainants have concealed the facts in order to take advantage of the respondent's company and have not approached this Bench with clean hands. That this Bench has got no jurisdiction to try & decide the instant complaint for the alleged violation, no cause of action can be said to have arisen to the complainants in any event to claim refund alongwith interest. Thus, as per Section 19(3) the complainants are not legally entitled to claim possession till 01.09.2026 and the cause of action to seek possession shall arise only after 01.09.2026. The delay in handing over the apartment related to violation of a term of the agreement for sale and it cannot be termed as violation of the Act, Rules and Regulation. The Act, Rules and Regulation nowhere provide for completion schedule of a project except for where the declaration has been made to this effect by the promoters. Even Sections 18 and 19 of the Act, while provided measures to compensate an allottee refers to violation of the agreement




for sale and not violation of the Act, Rules and Regulations. On merits, it is submitted that even if the complaint is held to be maintainable, although the submission is otherwise, even then, as on date, the complainants have no cause of action to file the instant complaint under Real Estate (Regulation & Development) Act, 2016 read with the Punjab State Real Estate (Regulation & Development) Rules, 2017. Moreover, this Authority has no jurisdiction under the Real Estate (Regulation & Development) Act, 2016 read with the Punjab State Real Estate (Regulation & Development) Rules, 2017 to try and entertain the complaint in the present form. Further, it is averred that instant complaint for seeking compensation for delayed possession is liable to be dismissed. It is admitted fact that complainants entered into an agreement to sell, with the respondent company with regard to the apartment in question and the amounts paid by the complainants are not admitted subject to strict proof of the same. The respondent company has already paid Rs.76,911/- under the subvention scheme to HDFC Bank on behalf of the complainants, but this fact has been concealed by the complainants. Further, it is averred that handing over possession was subject to fulfillment of various terms and conditions of buyer's agreement, however, the construction got delayed due to non deposit of timely payments by the allottees. Even otherwise, the project has been got registered with RERA Punjab, wherein the date of completion of the project is 01.09.2026. However, the

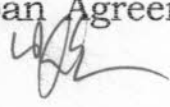


Company is making its earnest efforts to deliver possession shortly or as may be slightly extended due to force majeure condition on account of COVID-19 which is duly addressed by RERA, Punjab as per notification dated 28.10.2020 which is annexed as Annexure -4. The entitlement to claim the refund alongwith interest for delay would only arise once the possession has not been handed over as per the declaration given by the Promoter under Sub Clause © of Clause (1) of Sub Section 2 of Section 4. The violation of the Act, can only be said to have occurred after the period of 9 years, from the registration of project under RERA. Further, it is averred that construction of the tower is still going on and the possession will be handed over very shortly to the complainants. The instant complaint is bereft of any merit and the same is liable to be dismissed with cost throughout.

4. Reply has also been filed on behalf of respondent no.4-HDFC taking preliminary objections to the effect that HDFC Limited has been merged with HDFC Bank Ltd. vide Company's scheme Petition No.243 of 2022 decided on 17.03.2023, hence the present reply has been submitted on behalf of HDFC Bank Ltd. It has further been averred that there is no allegation against respondent No.4 with regard to deficiency of services and as such, the complaint is not even maintainable against it. On merits, it is averred that the grievances of complainants are against the respondents No.1 to 3 and nothing has been claimed against respondent No.4.



The complainants are borrowers of respondent No.4 and their inter-se obligations are inter alia governed by Loan Agreement dated 30.04.2016 and Tripartite Agreement dated 14.04.2016. The consequences of default in repayment of the loan are governed by the terms and conditions of the loan agreement, which are not in dispute. Copy of Loan Agreement dated 30.04.2016 and Tripartite Agreement dated 14.04.2016 are Annexure R-4 and Annexure R-4/2 respectively. Further, it is averred that unit in question is mortgaged with respondent No.4, which holds exclusive charge over the same and in case of cancellation of the unit or in the contingency of termination of the Buyer's Agreement dated 25.03.2016. The respondent No.4 has right to seek apportionment of its dues. It is also averred that it is specifically agreed between the parties that in case of default on the part of Promoter towards the allottees/applicants, the liability of the applicants as borrowers would continue towards the respondent No.4. The applicants/complainants have been sanctioned loan of Rs.28,46,560/-, out of which respondent No.4 has been disbursed an amount of Rs.11,99,739/- towards the sale consideration of the unit in question, which was mortgaged with respondent No.4. That in the event this Authority concludes that the promoter has caused breach of the Buyer's Agreement in their obligations towards the allottees/applicants and the promoter is ordered to refund any amount in that eventuality, in terms of Loan Agreement and

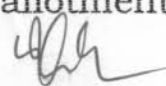


Tripartite Agreement, same may first be ordered to be apportioned towards the outstanding loan amount availed by applicants from respondent No.4 and the residual if any, may be refunded to the complainants after repaying the loan amount in entirety. However, in case the amount awarded is not sufficient to repay the loan in entirety, the respondent No.4 reserves its right to recover the shortfall in accordance with terms and conditions of the loan agreement/loan documents. It is prayed that complaint qua respondent No.4 may kindly be dismissed.

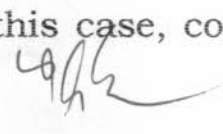
5. The violations and contraventions contained in the complaint were put to the representatives for the respondents to which they denied and pleaded not guilty and then the complaint was proceeded for further enquiry.

6. I have heard Ld. Representatives of the parties, who addressed their arguments, on the lines of their pleadings, as discussed in earlier part of this order.

Admittedly, complainants had also filed another complaint, against the respondents before Hon'ble Authority (RERA) seeking relief of refund of the amount alongwith interest, which was decided vide order dated 09.05.2024 and copy of this order is part of the record of the case in hand. Said order has become final and the same has not been challenged, nor it has been set aside by the Competent Authority, so parties are bound by the findings of the said order. There is no dispute with regard to allotment of the



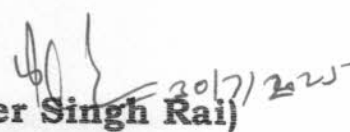
apartment in question, execution of Buyer's Agreement dated 25.03.2016, execution of Tripartite Agreement between complainants, respondents No.1 & respondent No.4. It is also not disputed that house loan of Rs.28,46,560/- was sanctioned. Possession of the apartment was to be handed over within 42 months i.e on before 25.09.2019, as per the Agreement dated 25.03.2016, as per its clause No.14. It was specifically held by the Hon'ble Authority in its above said order dated 09.05.2024 that respondent No.1 has failed to deliver possession of the apartment in dispute, to the complainants within the timeline, promised in the Buyer's Agreement dated 25.03.2016. Amount of Rs.17,22,828/- was ordered to be refunded alongwith interest, to the complainants by the Hon'ble Authority. It was specifically held that neither possession has been delivered to the complainants within prescribed time, nor any future timeline has been given by respondent No.1 for delivering the possession of the apartment, so the complainants could not be asked to wait indefinitely for possession of the apartment. Keeping in view the entire submissions of representatives of the parties, coupled with their pleadings, evidence and findings of the Hon'ble Authority, it is crystal clear that respondents have violated Section 18 of the Act, in view of which, as per provisions of Section 72 of the Act, complainants deserve reasonable compensation and litigation expenses. Keeping in view the entire facts and circumstances of this case, coupled



with the long duration for which possession has been delayed, certainly the complainants have been subjected to mental agony and harassment, for which they are held entitled for an amount of Rs.80,000/-, which is assessed as compensation in lumpsum by approximation. Apart from that, complainants have been compelled to initiate litigation to claim their rights, without their fault, for which they had to obtain legal assistance, so I assess another amount of compensation of Rs15,000/- on that score, to be paid to the complainants.

7. As a result of my above discussion, complainants are held entitled to compensation to the tune of Rs.95,000/- (Rs.80,000/- + Rs.15,000/-). Respondent No.1 is directed to pay this amount of compensation to complainants within 90 days from the date of this order. This complaint stands partly allowed, accordingly. Copy of this order be sent to the parties, free of costs, under rules. File be consigned to the record room after due compilation.

Pronounced
Dated:30.07.2025


(Rajinder Singh Rai)
Adjudicating Officer
Real Estate Regulatory Authority