

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

Complaint No.RERA/AdC No.0029 OF 2024

Date of Institution:06.02.2024

Date of Decision:29.09.2025

1. Munish Kumar, R/o Ward No.15, Mehnga Ram Wali Gali, Near Geeta Bhawan, Maur Mandi, Bathinda, Punjab Pin Code 151509.
2. Mamta Garg, R/o House No.9031, 3rd Floor, Casa Espana, Sector 121, Sahibzada Ajit Singh Nagar (Mohali), Punjab Pin Code 160055.

.....Complainants.

Versus

1. ATS Infrabuild Pvt. Ltd., 711/92, Deepali, Nehru Place, Central Delhi, Delhi Pin Code 110019.
2. Shivalik Greens Maintenance P.Ltd., SCO 510, Sector 70, Sahibzada Ajit Singh Nagar (Mohali), Punjab Pin Code 160055.

.....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 the respondent No.1.
Respondent No.2 ex-parte vide order dated 09.04.2024.

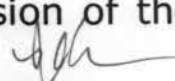
ORDER

Present complaint has been filed by the complainants, under Section 31 of the Real Estate

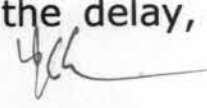


(Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules) against the respondents, seeking compensation for the mental harassment faced by them. They have also prayed to direct the respondents to pay amount @ 8% p.a against the total amount paid from the agreed date of possession, till possession was handed over.

2. Brief facts of the complaint are that on 10.04.2018, complainant No.1 booked a Flat No.09031, Third Floor in Tower No.9 with respondent No.1 for a total sale price of Rs.75,95,041/- at ATS Casa Espana near Verka Milk plant, Sector 121, Mohali. At the time of booking, the complainant paid Rs.15,00,000/- as booking amount. As on today, the flat stands in the name of both the complainants being husband and wife. That on 24.05.2018, both the parties entered into sale agreement, as per which, possession of the said flat was to be handed over to the complainants on or before 30.06.2018, with the grace period of three months. Copy of agreement is attached as Annexure C/1. Thereafter complainants paid Rs.50,000/- on 28.06.2018, Rs.22,00,000/- on 29.06.2018 & Rs.17,50,000/- on 30.06.2018. In the month of July 2018, the respondents were asked for possession of the flat, but

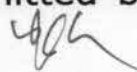


they did not give any satisfactory reply, rather demanded more money. Further, respondents asked the complainants that any delay in handing over possession from their side, would be compensated. Thereafter, complainants further paid Rs.49,108/- on 07.07.2018 and Rs.5,00,000/- on dated 29.09.2018 and Rs.5,000/- on 27.10.2018, Rs.15,00,000/- on dated 18.01.2019 and Rs.8,353/- on 12.02.2019 to the respondents. Complainants again asked the respondents about the possession, but they replied that the same would be delivered by the month of June 2019. When the complainants asked for compensation due to delay in possession, the respondents replied that balance amount of Rs.32,580/- has been adjusted against the same. They paid 100% of the total sale price of Rs.75,95,041/-. They objected to qua meager amount of Rs.32,580/- in the pretext of compensation which was not acceptable to them, for the delay of about 1 year. Copies of all payment receipts are attached as Annexure C/2 (Colly). That on 14.06.2019, possession of the flat was handed over to them after a delay of about 1 year from the agreed date of possession i.e 30.06.2018. That complainants asked the respondents about the occupation certificate, but again they did not give any satisfactory reply. Copy of possession letter is attached as Annexure C/3. That complainants asked the respondents that they should be compensated for the delay, but they



straightaway refused to do so. Then complainants filed a complaint under Form M claiming interest due to delay in possession and the same was allowed, copy of order dated 01.10.2021 is attached as Annexure C/4. That though the possession has been handed over, yet the respondents have failed to execute the sale deed in favour of complainants and the complainants were compelled to file one more application before Permanent Lok Adalat, Mohali for directing the respondents to execute the sale deed, which is still pending. Hence, this complaint in which the complainants have sought compensation for causing harassment to them due to delay in handing over possession of the flat and also sought direction to pay an amount @ 8% p.a against the total amount paid w.e.f from the agreed date of possession till the actual date of delivery of possession.

3. Respondent No.1, put in appearance and contested this complaint, by taking preliminary objections that complainants entered into an agreement to sell with respondent company in respect of Flat No.09031, 3rd Floor, Tower No.9 in the project "ATS CASA ESPANA". That the project "ATS CAS Espana" came to be registered with Punjab RERA on 14.09.2017 vide Memo No.RERA/2017/392 bearing Registration No.PBRERA-SAS80-PR0086. That as per declaration and the affidavit submitted by Promoter in



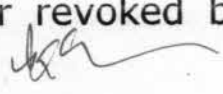
compliance of Section 4(2) (1) © of 2016 Act in FORM B, the completion time of the project has been declared to be 4 years from the date of registration. Affidavit-cum-Declaration submitted by the promoter and the registration certificate dated 14.09.2017 are Annexures R-1 & R-2. Further, as per terms of the agreement, unit in question was to be handed over by 30.06.2018, with grace period of 3 months. However, due to unavoidable circumstances, unit was completed in 2019 in all respects and even Occupation Certificate was granted by competent authority on 24.05.2019 and possession of apartment was duly offered to the complainants and they took possession also. That a true copy of Occupancy Certificate dated 24.05.2019 is annexed as Annexure R-3 and thereafter physical possession as well as key of the unit was handed over to the complainants which is annexed as Annexure R-4. That complainants being aggrieved by the delay in possession preferred a complaint No.GC No.1803 of 2020, titled as Munish Kumar & Anr. Vs ATS Infrabuild Pvt. Ltd & Ors before RERA Authority Punjab, seeking interest on delay in possession of flat and the respondent was directed to pay interest to complainants as per State Bank of India's highest MCLR rate plus 2% w.e.f 30.06.2018 till 14.06.2019 on which date possession was delivered and the said amount was to be paid within 60 days from the date of



receipt of order. That reliefs sought in the present complaint, have already been adjudicated, on the same cause of action and therefore, complainants cannot approach the Authority for adjudication on same cause of action again. That present complaint is mere an afterthought and again complainants have approached the Authority with intention to take undue advantage by misusing process of law and have filed present complaint to extract money from the respondents. Further, it is averred that after obtaining Occupancy Certificate on 24.05.2019 from competent authority, respondents handed over the physical possession of unit to the complainants on 14.06.2019 after due inspection of the site with their utmost satisfaction. That complainants after taking possession had specifically agreed that they shall have no claim against the respondents with respect to the unit. That the respondent company wants to bring to the notice of the Authority some relevant provisions as would be germane to decision of this complaint like Section 18,19,31,71 &72 of the Real Estate (Regulation & Development) Act, 2016. Further, it is averred that instant complaint filed before the Adjudicating Officer is not maintainable because possession of flat has already been handed over to complainants, after a valid occupancy certificate. That this complaint filed after a period of 5 years, which is time barred. That the

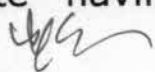


complaint is not maintainable in the present form, being misconceived and erroneous. That this Bench has got no jurisdiction to try & decide the instant complaint. That delay in handing over the apartment if any, relates to violation of the terms of the agreement for sale and it cannot be termed as a violation of the Act, Rules and Regulations. 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 promoters. The said declaration can at the most be read as violation of the agreement for sale, but certainly not of the Act, Rules and Regulations. As regards completion schedule given under Section 4 of the Act, Rules and Regulations are put into action to ensure that promoter adhere to that completion schedule. That there is no provision in the Act, Rules or Regulations that enables Regulatory Authority to initiate penal proceedings for non adherence to the completion schedule given by the promoters and the fact that the buyers agreement executed by complainants with respondent company is not the one which is prescribed by RERA Rules applicable in Punjab. That even Section 18 & 19 of the Act, while providing measures an allottee refers to violation of the agreement for sale and not violation of the Act, Rules and Regulations. There can be instances, where registration of the project has been cancelled, suspended or revoked by Regulatory



Authority, which is permissible in case of violation of the Act, Rules and Regulations. Such action of Regulatory Authority is not permissible in case of violation of the terms and conditions of the agreement for sale. That the complainants could not have invoked the jurisdiction of Authority in respect of the unit allotted to complainants, especially in view of the dispute resolution clause in the agreement. Thus, complainants have to invoke the Dispute Resolution Mechanism settled between the parties in the agreement to sell and the instant complaint is not maintainable at this stage. That complainants are not entitled to any compensation for alleged mental agony & harassment and there has been no mental agony or harassment suffered by the complainants. That claims of the complainants seeking compensation on multiple heads are not maintainable and legally not permissible. That complainants have no cause of action to file the present complaint which is false, frivolous, misconceived and has been filed with sole intention to grab monetary benefits by harassing the respondents. That complainants are not entitled to any relief whatsoever. The present complaint is a gross abuse of process of law and is liable to be dismissed with exemplary costs.

4. Notice of the complaint was issued to the respondent No.2. However, despite having been duly



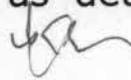
served, it did not choose to appear and contest this complaint, so this respondent was proceeded against exparte, vide orders dated 09.04.2024.

5. Rejoinder to the reply was not filed by the complainants. However, they reiterated the contents of the complaint and denied those of the reply filed by the respondents, at every stage of the proceedings in this case.

6. Violations and contraventions contained in the complaint were put to the representative of the respondent, to which he denied and did not accept the allegations. Then the complaint was proceeded for further enquiry.

7. I have heard learned authorized representatives of the respective parties and have gone through the record of this case carefully, with their able assistance. Each party argued his case on the lines of his pleadings, as detailed in earlier part of this order.

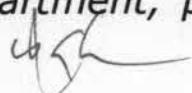
Admittedly, the flat in question, was got booked by the complainants with the respondents and agreement in this regard was executed on 24.05.2018. Its sale price was settled as Rs.75,95,041/-, which has been paid by the complainants, as mentioned in Para No.2 of this order and pleadings of the complainants. Since possession of the flat was not delivered ~~to~~ in time, as per settlement between the parties, so the complainants have preferred the present complaint seeking compensation etc. as detailed in para



No.1 of this order, on the ground of their harassment, mental agony etc. On the other hand, learned representative of the respondent argued that possession of the flat has already been delivered to the complainants. For delay of about one year in possession, complainants have already availed their remedy before the RERA Authority and vide order dated 01.10.2021 passed by the RERA Authority, they have been allowed interest as per State Bank of India's highest marginal cost of lending rate plus 2 % w.e.f 30.09.2018 till 14.06.2019 on which date, the possession was delivered to the complainants. Learned representative argued on the lines of pleadings of the respondents and also submitted that since the complainants have not withdrawn from the project and have taken possession of the flat, so they are not entitled for any compensation, as claimed by them, as per Section 18 (1) of the Act. So far as their relief qua interest on the paid amount is concerned, that relief has already been granted by the Authority to them. He lastly prayed for dismissal of this complaint.

Keeping in view the pleadings and submissions of both the parties, for proper and effective disposal of this complaint, perusal of Section 18 of the Act is very important, which is reproduced as under:-

"18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —



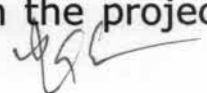
(a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

(b) xxxx xxxx

*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*

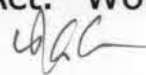
*"Provided that where an **allottee does not intend to withdraw** from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

A close scrutiny of the aforesaid Section 18(1) of the Act leaves no manner of doubt that this Section deals with the matters in which the project of the case is not completed by the promoter, within the stipulated period as per terms and conditions settled between the parties, then the allottee has the option of withdrawing from the project and seek the relief of refund of the paid amount alongwith interest, as per rules and also compensation. However, if the complainant chooses to remain in the project, then the



only remedy provided for the default of the promoter in completion of the project, is to get interest on the paid amount from the stipulated date of possession, till the actual date of delivery of possession.

8. Now coming to the case in hand, admittedly, the complainants have not withdrawn from the project, rather, they have already availed the remedy of claiming interest on the paid amount for the delayed period, before the Hon'ble Authority, as is clear from their pleadings, as well as copy of order dated 01.10.2021 passed by the Hon'ble Authority RERA in their favour. Copy of this order is available on the record of this complaint and it is also not disputed that this order has become final. Admittedly the claimants have already taken possession of the flat in question. In view of findings of our Hon'ble Supreme Court in **Civil Appeal 6745-6749 of 2021, titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and others etc.**, alongwith connected appeal decided on 11.11.2021, remedy seeking relief of Interest, Rent Amount, lies with the Hon'ble Regulatory Authority (RERA), whereas remedy qua compensation lies with this Bench. In the case in hand, admittedly the complainants have chosen to continue with the project, so they are not entitled to seek compensation under the Act, as is clear from above mentioned Section 18 (1) of the Act. Wording of this



provision of the Act, makes it crystal clear that allottee/complainant can only seek compensation, if he/she withdraws from the project. Otherwise, if he/she does not intend to withdraw from the project, he/she shall be paid only interest for every month of delay, till handing over of the possession, at such rate as may be prescribed. This remedy has already been availed by the complainants, from the Hon'ble Authority of RERA through order dated 01.10.2021 passed in Munish Kumar etc. Vs ATS Infrabuild Pvt. Ltd. (Complaint No.GC 1803/2020). Keeping in view all these facts and circumstances, coupled with Section 18 of the Act, since the complainants have not withdrawn from the project and they have already availed the relief of interest on the amount paid, for delayed period, so they are not entitled for compensation or interest, as claimed by them through this complaint. Accordingly, no case is made out in their favour for granting any relief to them. So, this complaint deserves dismissal.

9. As a result of my above discussion, this complaint stands dismissed and disposed of, with no order as to costs. A copy of this order be sent to both the parties, free of costs, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:29.09.2025


(Rajinder Singh Rai)
Adjudicating Officer,
RERA, Punjab.