

**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.AdCNo.0041 of 2024

Date of Institution: 13.03.2024

Date of Decision:25.09.2025

1. Sharanjit Singh.
2. Gurpreet Kaur, both residents of House No.538/3, Map Accn, Tank Area II, Cement Town Cantt, Dehradun, Uttarakhand, Pin Code 248002.

.....Complainants

Versus

M/s ATS Estates Pvt. Ltd. 711/92, Deepali, Nehru Palace,
New Delhi, Delhi Pin Code -110019.

.....Respondent

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

Present: Mr. Sanjeev Gupta Advocate, for the complainants.
Mr. Hardeep Saini Advocate, for respondent.

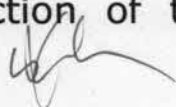
ORDER

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") read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017,

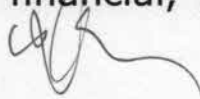


(hereinafter called as the Rules) against the respondent/promoter, seeking compensation and litigation expenses for not handing over possession of apartment in the project 'ATS Golf Meadows Lifestyle' situated at Derabassi, District SAS Nagar, Mohali, Punjab.

2. Brief facts of the complaint are that complainants applied for a residential apartment in the project 'ATS Golf Meadows Lifestyle' in April 2016, by depositing the booking amount of Rs.1,50,000/- vide cheque dated 06.04.2016. They further paid an amount of Rs.16,02,318/- vide cheque dated 12.05.2016 to the respondent. That an apartment bearing No.10054, on 5th Floor, Tower No.10, measuring 1900 square feet approximately of super area, alongwith 01 car parking area, was allotted to the complainants. Copy of provisional allotment letter dated 15.06.2016 is Annexure C-1. That Buyer's Agreement (Annexure C-2) in respect of said apartment was executed between the parties on 15.06.2016 and specifications of the apartment were duly mentioned in the said agreement. Total sale consideration for the said apartment was fixed as Rs.48,17,500/-, which was inclusive of basic sale price of Rs.47,67,500/-. As per clause 14 of the Buyer's Agreement, possession of the apartment was to be delivered, as per the specifications mentioned in the agreement within 42 months, with grace period of 6 months from the date of start of construction of the particular

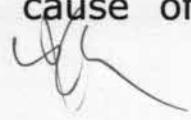


tower/building. That respondent vide its letter dated 27.22.2027 (Annexure C-3) intimated the complainants that the construction of tower No.10 had started on November 2017. Thus, as per clause No.14 of the agreement, respondent was bound to hand over the possession of the apartment by 30.11.2021. Thereafter, complainants further paid an amount of Rs.10,00,000/- vide cheque dated 07.07.2016 by availing loan from HDFC Bank. They further paid an amount of Rs.5,20,000/- vide cheque dated 07.08.2016 and an amount of Rs.2,18,00/- vide cheque dated 30.01.2017. Thus by 30.01.2017, complainants had paid a total amount of Rs.24,90,318/- to the respondent. A copy of receipt is annexed Annexure C-4. That as per the agreement, next instalment of Rs.14,30,250/- was due on the completion of structure, but the respondent has failed to construct the Tower No.10 till date and as such, respondent did not demand the instalment that was due on completion of structure. That complainants have made all the payments on time and the fixed date of possession has already expired in November 2021, but the respondent has failed to deliver the possession of the apartment till date. That respondent has failed to provide the facilities, amenities as agreed in the agreement. That respondent has been using the money of the complainants without delivering the possession. That acts of the respondent has caused financial, physical and

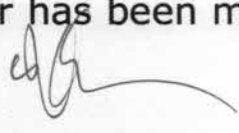


mental hardship to the complainants. So, they have sought compensation on account of financial loss, mental harassment and litigation expenses from the respondent. Hence, the present complaint.

3. Upon service, respondent appeared and contested the complaint by taking preliminary objections that complainants had no cause of action to file this complaint under the provisions of the Act, that as per declaration & affidavit submitted by Promoter in compliance of Section 4(2) (1) (C) of 2016 Act in Form B, the completion time of the project has been declared to be 9 years from the date of the registration. That the project was registered on 01.09.2017 and consequently 9 years period would expire on 30.08.2026. That claims of the complainants seeking compensation on multiple heads are not maintainable and legally not permissible. That Section 19(4) of the Act, provides that allottee shall be entitled to claim refund of the amount paid alongwith interest at such rates as may be prescribed and compensation in the manner as provided in the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment in accordance with the terms of the Agreement to sell. That once the complainants are not entitled to claim possession till 01.09.2026, no cause of action has arisen in their favour to seek delayed interest also and cause of action qua



possession shall arise only after 01.09.2026. That the instant complaint is liable to be dismissed also on the ground that in terms of clause 37 of the Agreement, only the court at Noida, Uttar Pradesh had jurisdiction to decide the disputes. That there was an arbitration clause in agreement, whereby any dispute between the parties was required to be referred to the Arbitrator. That there is no clause in the Act 2016, which negates the arbitration clause. As regards completion schedule given under Section 4 of the Act, the provisions of the Act, Rules and Regulations are put into action to ensure that promoter adheres to that completion schedule. 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. Denying rest of the averments of the complaint, a prayer has been made for dismissal of the complaint with costs.



4. Complainants filed rejoinder rebutting the contentions of written reply and reiterating the contents of their complaint, at every stage of the proceedings in this case.

5. 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. Thereafter, the complaint was fixed for further enquiry.

6. 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 has argued its case on the lines of its pleadings, as detailed in the earlier part of this order.

Admittedly, the apartment in question was allotted to the complainants by the respondent, against receipt of money, as detailed in Para No.2 of this order. But its possession could not be delivered to the complainants, as per agreement executed between the parties. With a view to withdraw from the project, complainants had moved Hon'ble Authority (RERA) seeking refund of the money deposited by them with the respondent alongwith interest, with regard to the said apartment. This complaint of the complainants was decided by the Hon'ble Authority vide order dated 09.04.2025, copy of which is available on the record of the present case (GC No.0397 of 2023, Instituted on



29.10.2023, Decided on 09.04.2025). All the legal objections taken by the respondent in the present case, as detailed in Para No.3 of this order, were also taken in the said complaint before the Hon'ble Authority by the respondent. But these objections were found to be unsustainable by the Hon'ble Authority in Para No.6 of it's order dated 09.04.2025. Complainants were allowed refund of the amount deposited by them with the respondent alongwith interest, as mentioned in Para No.8 of the said order. Meaning thereby, complainants have withdrawn from the project of the respondent. There is nothing on record that the above said order of the Hon'ble Authority has been challenged by any of the parties, or the same has been set aside by the competent authority. Meaning thereby, it has become final and both parties are bound by the findings of the order dated 09.04.2025. Keeping in view all these facts and circumstances, it stands proved that the delay in delivering possession of the flat is attributed to the respondent. Therefore, his conduct falls within the mischief of Section 18(1) of the RERA Act, which runs 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".

The complainants therefore are entitled to compensation, because of causing long delay in delivering the possession of the apartment in question, by the respondent.

7. In my considered opinion, compensation can be granted under the heads pecuniary and non-pecuniary. Though compensation has not been defined under the RERA Act; however, Section 72 of the Act mentions about the factors to be taken into consideration for determination of the quantum of compensation. Section 72 of the Act runs as under:

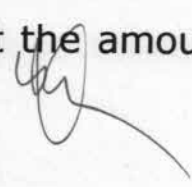
72. Factors to be taken into account by the adjudicating officer: while adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—



- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

Section 72 has given scope of considering other factors, which are considered necessary in furtherance of justice. Since the complainants have not been able to get possession of the unit in question, we have to consider psyche of the Indian Society, in this regard. Normally, Indians are emotionally attached to own a property. They are prepared to spend major share of their life time earning and also ready to obtain loans from the financial institutions in the hope of getting property. Since the complainants, without their fault, have not been able to get possession of the apartment in question, for a long time and had to seek the remedy under existing law and for that, have to suffer harassment, mental agony and have to incur expenses to initiate this litigation for claiming their rights, so they are certainly entitled for compensation and litigation expenses.

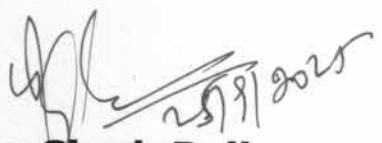
Keeping in view the entire facts and circumstances narrated above and taking into account the amount paid by



the complainants with regard to the purchase of the apartment in dispute and the duration for which the possession has been delayed, amount of Rs.1,25,000/- is assessed as compensation in lump sum by approximation. Apart from this, the complainants had to pursue this litigation by spending some amount and spending considerable time from their busy schedule, for attending the proceedings of this case, so they are also entitled for litigation expenses to the tune of Rs.25,000/-. Accordingly, this application deserves to be allowed upto that extent.

8 As a result of my above discussion, this complaint stands partly allowed and disposed of. Complainants Sharanjit Singh and Gurpreet Kaur are held entitled to recover the total compensation to the tune of Rs.1,50,000/- (Rs.1,25,000/- + Rs.25,000/-) from the respondent. Accordingly, respondent is directed to pay this amount to the complainants within 90 days from the date of this order. Copy of this order be sent to the parties, free of cost, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:25.09.2025


(Rajinder Singh Rai)
Adjudicating Officer
RERA, Punjab