

**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.0043 of 2024

Date of Institution: 18.03.2024

Date of Decision:07.01.2026

1. Avtar Singh,
2. Nirmaljit Kaur, Both R/o Flat No.1513, ATS Golf Meadows, Tower No.15, Barwala Road, Dera Bassi, District SAS Nagar (Mohali), Punjab, Pin Code 140507.

.....Complainants.

Versus

1. ATS Golf Meadows Lifestyle, 711/92 Deepali, Nehru Place, Central Delhi, Delhi Pin Code-110019.
2. Dynamic Colonizers Pvt. Ltd., 711/92 Deepali, Nehru Place, Central Delhi, Delhi Pin Code-110019.

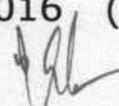
.....Respondents

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

Present: Ms. Neetu Singh Advocate, for the complainants.
Mr. Hardeep Saini Advocate, for respondents.

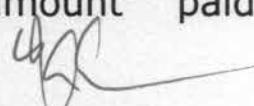
ORDER

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 respondents/promoters, seeking compensation and litigation expenses etc.

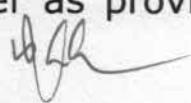
2. Brief facts of the complaint are that in the year 2016, complainants booked a flat in the project of the respondents i.e. "ATS GOLF MEADOWS LIFESTYLE". They entrusted their retiral benefits to the respondents, who cheated them by not delivering the possession of the flat, as promised under the agreement, executed between the parties. On 16.03.2016, complainants received a confirmation letter qua allotment of Flat No.8104 (super area of 1350 square feet), on 10th floor in Tower-8 in the project of the respondents. That on 09.05.2016, Buyer's Agreement was executed between the parties and as per clause 14 of the said agreement, respondents were supposed to deliver possession of the flat in question, within 42 months from the date of actual start of the construction of a particular tower/building in which the registration for allotment was made, with an additional grace period of 6 months. Copy of provisional allotment letter dated 09.05.2016 and Buyer's Agreement dated 09.05.2016 are Enclosures C-1 & C-2, respectively. True copy of ledger dated 22.07.2022 reflecting the amount paid by



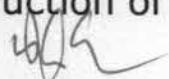
complainants is Enclosure C-3. The respondents without having started construction at the site, kept raising demands. Further, till date, complainants have made a payment of Rs.19,55,688/-, out of the total sale price of the flat Rs.34,40,000/-. The respondents have failed to give timely possession of the flat as per Buyer's Agreement, which has caused mental harassment, financial hardships and agony to the complainants. That hard-earned money of complainants has been misappropriated by the respondents and they being no longer interested to hand over possession of the unit, the complainants filed complaint bearing GC No.0414/2022 before the Hon'ble Authority for refund of the amount. On 19.01.2024, the Hon'ble Authority has been pleased to hold the respondents in breach of its obligations and has allowed the prayer for refund of the amount paid by the complainants. However till date, the order of Hon'ble Authority has not been obeyed by the respondents. The complainants are also deprived of the interest which could have been accrued on the amount deposited with the respondents. True copy of certificate issued by Chartered Accountant with regard to the interest, which could have been accrued on the money deposited with the respondents, is Enclosure C-4. That as per Section 72 of the RERD Act, complainants have sought compensation at the rate of 10% for mental harassment and agony, interest and litigation

expenses from the respondents. Hence, the present complaint.

3. Upon service, respondents appeared and contested the complaint by pleading that on 08.05.2016, complainants entered into an agreement to sell with the respondent-company in respect of Flat No.8104, 10th Floor, Tower No.8 in the project "ATS GOLF MEADOWS LIFE STYLE". That the respondent-company got its project registered under RERA Punjab, vide Registration Number as PBRERA-SAS79-PR0007. That as per declaration and the affidavit submitted by Promoter (Respondent-Company) in compliance of Section 4(2) (1) (c) of 2016 Act in FORM-B, the completion time of the project which consists of 15 towers, has been declared to be "9 years". That the project of the respondents was registered on 01.09.2017 vide Memo NO.RERA/2017/13, consequently, the date of completion of the project is 01.09.2026. True copy of Affidavit-Cum-Declaration in FORM-B and letter of Registration dated 01.09.2017 alongwith Registration Certificate issued by RERA Punjab, are Annexure R-2 (colly). That complainants have no cause of action to file this complaint under the provisions of the Act or Rules. 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 with or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of the Agreement to sell. Further, the delay in handing over of apartment relates to violation of a term of the agreement for sale and it cannot be termed as violation of the Act, Rules or Regulations. 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. The completion of a real estate project is dependent on numerous factors, which can be beyond the scope of the Act, like Force Majeure, default on the part of the allottees etc. In terms of specific provisions, contained in the Agreement executed between the respondents and complainants, complainants could not have invoked the jurisdiction of the Authority, in respect of the unit allotted to them, 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 under the Act, read with Rules. The averments regarding the amounts paid by complainants are not admitted and they be put to strict proof. The respondents issued a letter dated 13.02.2017 intimating regarding the actual start of construction of Tower



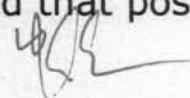
No.8 is matter of record. The instant complaint is bereft of any merit and the same is liable to be dismissed. That complainants are not entitled to any relief as claimed by them in the complaint. Denying rest of the averments of the complaint, a prayer has been made for its dismissal, with costs.

4. Rejoinder to the written reply was filed by the complainants, reiterating the contents of their complaint and denying those of the written reply, filed by the respondents.

5. Violations and contraventions contained in the complaint were put to the representative for the respondents. He totally denied all of them, including allegations of the complainants. Thereafter, the complaint was proceeded for further enquiry.

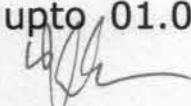
6. I have heard the representatives of the parties, who addressed the arguments on the lines of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the case file, with their able assistance.

Ld. Counsel for complainants argued as per complaint to the effect that the flat in question, was booked by the complainants in the project of the respondents and the Buyer's Agreement was executed between the parties on 09.05.2016 in this regard. He further argued that possession



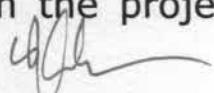
of the flat was to be delivered within 42 months from the date of actual start of the construction of particular tower. That complainants have made payment of Rs.19,55,688/- out of total sale price of Rs.34,40,000/-, however, respondents have failed to deliver timely possession of the said flat, to the complainants and they have misappropriated their hard earned money. He further argued that the prayer of complainants for refund of their deposited amount has been allowed by the Hon'ble Authority vide order dated 19.01.2024, copy of which is placed on record. But the respondents have failed to comply with even said order of the Hon'ble Authority. That similar pleas of the respondents, have been rejected by the Hon'ble Authority, while passing the said order dated 19.01.2024. Ld. Counsel further argued that a case is made out for compensation in favour of the complainants, on the grounds of their mental agony, harassment etc., alongwith litigation expenses. He lastly prayed that this complaint may be allowed with costs, as per its prayer.

On the otherhand, Ld. Counsel for respondents argued that there is no delay on the part of the respondents to deliver possession of flat to the complainants. It is their further plea that their project was registered on 01.09.2017 and consequently, the date of completion of the project was extended upto 01.09.2026.



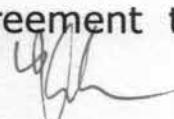
Ld. Counsel further argued that this complaint is not maintainable, as the complainants have not availed the remedy through Dispute Resolution Mechanism, as per the agreement to sell. So this complaint is not maintainable. Other pleas of the complainants with regard to the grant of compensation as well as of litigation expenses etc. have also been contested vehemently and a prayer has been made for dismissal of the present complaint, with costs.

Admittedly, the flat in question was allotted to the complainants by the respondents, against receipt of money, as detailed in Para No.2 of this order. But its possession could not be delivered to them, 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 respondents alongwith interest, with regard to the said flat. Their said complaint was allowed vide order dated 19.01.2024, copy of which is available on the record of the present case (GC No.0414 of 2022). Similar objections, as taken in the present complaint, were also taken by the respondents in the said case before the Hon'ble Authority, but they were found to be unsustainable. Complainants were allowed refund of the amount deposited by them with the respondents, alongwith interest. Meaning thereby, complainants have withdrawn from the project of



the respondents. There is nothing on record to suggest that the above said order dated 19.01.2024, passed by the Hon'ble Authority has been set aside by any competent authority. Meaning thereby, it has become final and both parties are bound by the findings of the order dated 19.01.2024. No doubt, Ld. Counsel for respondents has vehemently argued that since there was Arbitration clause in the agreement of the parties, so the complainants could not file the present complaint, without availing remedy before the Arbitration. In a similar situation, our Hon'ble Supreme Court in the case of '**Emaar MGF Land Ltd. Vs. Aftab Singh**' (Civil Appeals No.23512-23513 of 2017) has held that mere presence of an Arbitration clause does not preclude the jurisdiction of this Authority. Further, Section 31 of the Act, provides for the filing of a complaint by an aggrieved person. Sections 88 and 89 thereof provide that its provisions would be in addition to those of any other law in force at the time; and also that the Act would have overriding effect in case of inconsistency with any other law. So this plea of the respondents is also not sustainable.

It is further stand of the respondents that their project was registered with RERA on 01.09.2017, so date of completion of project was 01.09.2026 and this complaint of the complainants is premature and is not maintainable. As per clause 14 of the agreement to sell



dated 09.05.2016, possession was to be delivered within a period of 42 months, with a grace period of 6 months from date of start of construction of a particular tower. As per respondent's own letter dated 13.02.2017, construction of tower No.8 had started in February 2017. So respondents were bound to deliver possession to the complainants by 31.01.2021, but they could not do so. As a result of all these things, complaint of complainants to refund their amount was allowed by the Hon'ble Authority. Accordingly, this plea of the respondents is also of no use for them. Keeping in view all these facts and circumstances, it stands proved that the delay in delivering possession of the flat is attributed to the respondents. Therefore, their 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".

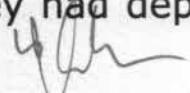
The complainants therefore are entitled to compensation, because of causing long delay in delivering the possession of the flat in question, by the respondents.

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:—

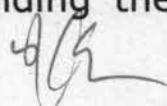
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to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

Section 72 has given scope of considering other factors, which are considered necessary in furtherance of justice. Now coming to the case in hand, complainants are senior citizens aged about 70 years and they had deposited



their retiral benefits with respondents to purchase a flat, so as to live peacefully in their old age, in their own house. Since the complainants have not been able to get possession of the flat 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 i.e old couple, without their fault, have not been able to get possession of the flat in question, for a long time i.e about 3 years 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 flat in dispute and the duration for which the possession has been delayed, amount of Rs.2,25,000/- 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, that too, in the evening of their life, so they are also entitled for litigation expenses to the tune of Rs.40,000/-. 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 Avtar Singh and Nirmaljit Kaur are held entitled to recover the total compensation to the tune of Rs.2,65,000/- (Rs.2,25,000/- + Rs.40,000/-) from the respondents. Accordingly, respondents are directed to pay this amount to the complainants within 90 days from the date of this order. If they failed to do so within said 90 days, complainants shall also be entitled to recover the said amount alongwith interest @ 8% p.a. from the date of this order, till realization of actual due amount. 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:07.01.2026


7/1/2026
(Rajinder Singh Rai)
Adjudicating Officer
RERA, Punjab