

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

1.

Complaint No. GC No.0199 of 2022
Date of Institution : 07.04.2022
Date of Decision: 17.12.2024

Satish Bansal, resident of House No.1782, Ward No.6, Near Ganesh Blood Bank, Jyoti Nagar, Thaneshar, District Kurukshetra, Haryana, PIN Code 136118

...Complainant

Versus

ATS Estate Pvt. Ltd.,711/92, Deepali, Nehru Place, New Delhi-110019

....Respondent

2.

Complaint No. GC No.0208 of 2022
Date of Institution : 11.04.2022
Date of Decision: 17.12.2024

1. Usha Rani,
2. Satish Bansal

Both residents of House No.1782, Ward No.6, Near Ganesh Blood Bank, Jyoti Nagar, Thaneshar, District Kurukshetra, Haryana, PIN Code 136118

...Complainants

Versus

ATS Estate Pvt. Ltd.,711/92, Deepali, Nehru Place, New Delhi-110019

....Respondent

Present: Shri Vikas Sheel Verma, Advocate for complainants
Shri Hardeep Singh, Advocate for Shri J.P.Rana, Advocate for respondent

ORDER

These 2 complaints will be decided by a common order since similar points of law and facts are involved in each of these. A copy of the order be placed on each file.

2. The above titled complaints filed by the complainants in their individual capacity, are under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act of 2016) read with Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as Rules of 2017) against the respondent/ATS Estates Pvt. Ltd. seeking issuance of direction to the respondent to execute Agreement to sell; Sale Deed and also to issue offer for possession as the complainants are ready to pay the balance consideration of the units. It is further the prayer of the complainants that the alleged termination letter issued by the respondent be declared as null and void.

The brief back ground of each complaint is as under:-

1. GC No.0199 of 2022:

3. The brief facts of the case are that the complainant namely Satish Bansal upon advertisement by the respondent/ATS Estates Pvt. Ltd. regarding its project "ATS GOLF MEADOWS-V", (Registration No.PBRERA-SAS79-PR0543) being developed at Tehsil Derabassi, District SAS Nagar, Mohali, Punjab, booked Plot No. 127, measuring 146.50 Sq. Yds. @ basic sale price of Rs.15,400/- including External Development Charges (the net consideration amounting to Rs.22,56,100/-). The wife of the complainant also booked another adjoining Plot No.128. It is further submitted that the complainant requested that he be informed regarding execution of Agreement to Sell as the same was required for obtaining loan and also requested to demarcate the plot as shown in the layout plan.

4. It is further submitted that upon request made in the last week of February 2020, the respondent re-allotted Plot No.126 in lieu of Plot

No.127 with the increased price of the Plot No.126 @ 500/- per Sq. Yd. being park facing. Similarly on their joint request the respondent also re-allotted Plot No.127 in lieu of Plot No.128 in favour of complainant's wife.

5. It is also pleaded by the complainant that on approaching the respondent for entering into Agreement to Sell he was flatly told that some permissions of this project are still awaited from the Competent Authority.

6. It is further contended that after relaxation of Covid-19 pandemic restrictions the complainant again approached the respondent to execute the agreement to sell as he was ready to perform his part. However, neither agreement to sell was executed nor any date for handing over possession was confirmed by the respondent. The respondent has been lingering the matter on one pretext or the other.

7. It is further averred by the complainant that when in the 2nd week of November 2021, he approached the respondent, he was handed over a copy of the agreement to sell. Subsequently, while the complainant was in the process of making the remaining outstanding payment, he was surprised to note that allotted plots have already been terminated and the amounts paid by the complainant and his wife have already been forfeited. On perusing the copy of final notice of termination of allotment of plots provided by the representative of the respondent, it was observed that no termination letter had ever been received by them.

8. It is the prayer of the complainant that respondent be directed to execute Agreement to sell; sale deed and also to issue offer for possession as the complainant is ready to pay the balance consideration of the unit(s). It is further prayed that the alleged termination letter of the unit(s) of the complainant be declared as null and void.

9. In support of his case the complainant has attached copies of application for allotment, account statement, unsigned agreement to sell format, and alleged termination letter as Annexures P-1 to P-4.

2. GC No.0208 of 2022

10. The brief facts of this complaint are that upon advertisement by the respondent regarding its project "ATS GOLF MEADOWS-V", (Registration No.PBRERA-SAS79-PR0543) being developed at Tehsil Derabassi, District SAS Nagar, Mohali, Punjab, complainant no.1 booked Plot No.128, measuring 146.50 sq. yards @ basic sale price of Rs.15,400/- (net consideration amounting to Rs.22,56,100/-) including External Development Charges on 17.12.2019. The complainant no.2 also booked another adjoining Plot No.127. It is further submitted that both the complainants requested that they be informed regarding execution of Agreement to Sell as the same was required for obtaining loan and also requested to demarcate the plot as shown in the layout plan.

11. It is further submitted that upon request made in the last week of February 2020, the respondent re-allotted Plot No.127 in lieu of Plot No.128 by endorsing the same on the application form of complainant no. 1 and also re-allotted Plot No.126 in lieu of Plot No.127 in favour

of complainant no. 2 with assurance that the payment plan would be flexible.

12. It is also pleaded by the complainants that on approaching the respondent for entering into Agreement to Sell they were flatly told that some permissions of this project are still awaited from the Competent Authority.

13. It is further contended that after relaxation of Covid-19 pandemic restrictions the complainants again approached the respondent to execute the agreement to sell as they were ready to perform their part. However, neither agreement to sell was executed nor any date of possession was confirmed by the respondent. The respondent has been lingering the matter on one pretext or the other.

14. It is further averred by the complainants that when in the 2nd week of November 2021, complainant no.2 approached the respondent, he was handed over a copy of the agreement to sell. Subsequently, complainant no.2 was in the process of making the remaining outstanding payment, he was surprised to note that allotted plots have already been terminated and the amounts paid by both the complainants have already been forfeited. On perusing the copy of final notice of termination of allotment of plots provided by the representative of the respondent, it was observed that the plot of the complainant no.1 was never terminated and no termination letter had ever been received by them. The respondent is habitual in taking different stands as per its convenience to get wrongful gain.

15. It is the prayer of the complainants that respondent be directed to execute Agreement to sell; sale deed and also to issue offer for possession as the complainants are ready to pay the balance consideration of the units. It is further prayed that the alleged termination letter of the units of the complainants be declared as null and void.

16. In support of their case the complainants have attached copies of application for allotment, account statement, unsigned agreement to sell format, and alleged termination letter as Annexures P-1 to P-4.

17. Upon notice, respondent appeared through Shri J.P.Rana, Advocate and Shri Hardeep Saini, Advocate and submitted reply. (Reply filed in Usha Rani and Satish Bansal Vs ATS Estates Pvt. Ltd. – GC No.0208 of 2022 is being considered here since the reply filed in Satish Bansal's case is identical and only there is a change in number of allotted Plot). It is stated by Counsel for respondent that they being a renowned Real Estate Company engaged in the business of construction and Real Estate has successfully developed various real estate projects. It is admitted that respondent is developing the project namely "ATS GOLF MEADOWS LIFE STYLE-V" at Village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab.

18. It is further contended that on 17.12.2019 complainant No.1 booked Plot bearing No.128, measuring 146.50 sq yards at the basic sale price of Rs.22,56,100/- @ Rs 15,400/- including EDC.

19. It is also stated in the reply that the complainants had failed to pay the remaining amount of consideration within the stipulated time as mentioned in the Payment plan of Application Form. It is further

submitted that complainant no.1 had paid only a booking amount of Rs.2,25,000/- vide Cheque bearing no.000128.

20. It is also contended that as per the application form for the allotment of the Plot or payment plan the complainants will have to pay eighty percent of the amount within forty-five days and the remaining ten percent at the time of possession of plot, failing which the allotment shall be canceled and booking amount shall be forfeited.

21. The learned Counsel for the respondent has also reproduced some of the relevant paras of the application form for allotment of the plot, which reads as under:-

"I/We hereby agree that post confirmation of my/our booking by the Company. I/We shall not be entitled to withdraws or surrenders the booking/allotment, for any reason whatsoever, at any point of time. In case of non-compliance the Company shall be entitled to forfeit the advance amount paid for booking allotment along with interest due/payable and brokerage paid for the said booking and may refund the balance amount to me/us, without any interest or compensation within 90 days of such cancellation.

I/We hereby undertake to abide by the terms and conditions of this Application Form. I\We hereby agree that the complete and detailed terms and conditions of the Allotment shall be provided in the Agreement to Sell. In the event the Company agreeing to allot me/us Plot. I/We agree to pay further installments as per the Payment Plan (opted by me/us) as shown in Annexure-B and/or as stipulated demanded by the Company, failing which the allotment shall be canceled and the Booking Amount and other sums shall be forfeited by the Company".

22. It is further stated that no cause of action has arisen in favour of the complainants to file the instant complaint under the provisions of the Act of 2016.

23. It is further contended that this Authority has got no jurisdiction to try and decide the instant complaint and also the complaint is not maintainable in the present form, besides being misconceived and erroneous.

24. On merits, apart from repeating the contents of the above contentions it is added that booking of plot No.128, in the above said project "ATS Golf Meadows-V", Tehsil Derabassi, District SAS Nagar (Mohali) and deposit of earnest money of 10% as booking amount for purchasing a Plot, is a matter of record. The complainants had failed to pay the remaining amount of consideration within the stipulated time of 45 days. Regarding reallocation of Plot No.127 in lieu of Plot No.128, it is stated by the respondent that it is a matter of record.

25. The respondent denied that complainants ever approached their office for execution of agreement to sell and the respondent never whispered that the agreement to sell would not be executed because of grant of some permissions by the Competent Authority. It is stated that the respondent had sent a demand letter dated 15.01.2022 to complainants, advising them to make remaining payment by 31.01.2020. Thereafter apart from telephonic reminders, the respondent also sent the complainants a final notice dated 16th June, 2020, but the complainants never responded/replied. After that the respondent had terminated the allotment of Unit/Plot bearing no.127 (Initially the allotment of Plot was bearing No.128) in their project "ATS

Golf Meadows-V" situated at Village Madhopur, Derabassi, Punjab and the same was sent to the complainants by registered post and also intimated telephonically.

26. Since the complainants had not deposited eighty percent of the amount within forty-five days, they are estopped by their own act and conduct to file present false, and frivolous complaint. Thus, the complainants are not entitled for any relief prayed for.

27. It is the prayer of the respondent that the present complaint(s) filed by the complainants is not maintainable and deserves to be dismissed with exemplary costs.

28. The learned Counsel for the complainants has filed rejoinder reiterating the contents of their complaint and controverted the contents of the reply of the respondent. However, it is added that the respondent is habitual in not providing the possession of the plot/flat as per their assurances given at the time of receiving of booking amount and also failed to complete the entire project and they are defying the orders of this Authority by not refunding the amount for which execution titled "*Dr. Samarjit Teja V/s ATS Estates Pvt.Ltd.*" is pending before this Authority, thus, the act and the conduct of the respondent is contradictory. It is further stated perusal of the copy of final notice of termination of allotment of plots established that to get wrongful gain for themselves they mentioned the wrong name and address of the complainants in the above said termination notice which was never received by them. The correct names and addresses of the complainants are duly mentioned in the application form dated 17.12.2019 for the allotment of the plots and the alleged termination

letter has been posted by the respondent with *malafide* intension just to create false evidence against the complainants. The respondent has no right to forfeit the earnest money of the complainants without executing the agreement to sell. The complainants reserve their rights to file a criminal complaint as well as to get compensation, mental agony and physical harassment on account of unfair trade practice adopted by the respondent. It is further averred that the application for allotment of plot is not in format as prescribed by RERA Authority and the same is in dotted and one sided lines in favour of the company/builder/respondent and the same is not binding upon the rights of the allottee/Complainant. It is further submitted that it is well settled law that the allottee could not be expected to go on making payments to the builder as per the payment plan, when the allottee discovered that the respondent/promoter is not in a position to hand over possession of the property in time.

29. The learned Counsel for the complainants has also referred the order passed by the National Commission in "*Rakesh Anand & Anr. Vs M/S. Royal Empires (Royal Minaar)*", First Appeal No. 1378 of 2016, decided on 09 April 2018 and reproduced the relevant part of the order which reads as under:

".....It is clear from these facts that the Respondent could not be expected to go on making payments to the OP builder as per the payment plan, when they could discover that the OP builder was not in a position to hand over the possession of the property in time."

30. The learned Counsel for the complainant has also cited the judgment passed by the Hon'ble Supreme Court of India in "*Haryana*

Urban Development Authority Vs. Mrs. Raj Mehta", Appeal (Civil) 5882 of 2002, decided on 24.09.2004, wherein it was "held that if the builder is at fault in not delivering possession of the unit by the stipulated date, it cannot expect from the allottee(s) to go on paying installments to it".

31. The learned Counsel for the complainants also referred the similar view taken by the National Commission, in "*Prasad Homes Private Limited Vs. E. Mahender Reddy and Ors.*", 1(2009) CPJ 136 (NC), which reads as under:-

"wherein it was held that when development work was not carried out at the site, the payment of further installments was rightly stopped by the purchaser. Under these circumstances, in no way, the Respondents can be termed as defaulters, in case, they had stopped making payments, on few occasions, as alleged by the opposite parties. Objection taken in this regard, stands rejected".

32. It is further stated that the respondent has been carrying out unfair trade practice on Complainants and the present complaint is squarely covered under the provisions of Section 18 of the Act. Thus, the complainants have the cause of action in their favour.

33. It is further pleaded that the complainants are approaching this Authority as the last resort to get the Justice and get refund of their deposited amount with interest and compensation.

34. The undersigned heard arguments of both the counsels for the parties on the stipulated date.

35. While reiterating the contents of their complaint as well as rejoinder Counsel for the complainants argued that they are entitled for the relief as prayed for in their complaint/rejoinder.

36. On the other hand, the learned Counsel for the respondent while reiterating the stand taken in the reply stated that at present they have no plot available with them to offer to the complainants, since the complainants have failed to make 80% payment within the stipulated time of forty-five days, so they terminated their bookings and also forfeited their 10% deposits.

37. In rebuttal, the learned Counsel for the complainants stated that the respondent admitted that there is no plot available with the respondent to offer to the complainants. However, the respondent did not intimate them regarding the non-availability of the plots. However, they cleverly terminated the bookings at their own even without refunding the booking amount. After a pause, the learned Counsel for the complainants further stated at the bar that he has the instructions to say that the complainants are ready and willing to receive back the 10% amount of the cost of the unit i.e Rs.2,25,000/- they deposited with the respondent at the time of booking but with prescribed rate of interest mentioned in the Act of 2016. To corroborate this fact, the learned Counsel for the complainants further pleaded it was also the prayer of the complainants in their rejoinder also.

38. The learned Counsel for the respondent stated that since the respondent has no plots to offer to the complainants, he has no objection if the prayer of the complainants is acceded to and stated

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that in view of these submissions of the parties, necessary order in these complaints may be passed accordingly.

39. The undersigned has considered the arguments of both the counsels of the parties and also perused their pleadings and record available of these cases.

40. Regarding the objection that the complainants have not made the payment of 80% within forty-five days, it has no legs to stand. Perusal of the application form dated 17.12.2019 for allotment of plot submitted by complainant no.1, wherein the following payment plan has been mentioned which is reproduced hereunder:-

"PAYMENT PLAN

10% Booking Amount	:	Rs,2,25,000/-
80% within 45 days	:	Rs.18,03,670/-
10% on possession	:	Rs.2,25,000/-"

41. The total cost of the plot was Rs.22,56,100/-, out of which Rs.2,25,000/- was paid by the complainants at the time of booking by way of Cheque No.000128 drawn on HDFC Bank.

42. It is the consistent case of the complainants that despite their repeated requests the respondent did not enter into agreement for sale for the reasons best known to them. The above payment plan only reflects how to make payment, but there is no mention about execution of documents in front of each payment that too hand written figures.

43. For the sake of convenience Section 13(1) of the Act of 2016, is reproduced below:-

""13. No deposit or advance to be taken by promoter without first entering into agreement for sale.-- (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

44. Thus, mentioning the 80% amount in the Payment Plan attached with the application form for allotment of plots to be paid within forty-five days by the complainants is strange enough and cannot be accepted that the complainants did not make payment.

45. It is also to be noted that the agreement for sale placed on file by the complainants themselves is an unfilled and totally blank document. It is the case of the complainants that this agreement was handed over to complainant no.2 by the representative of the respondent when he visited the office of the respondent. Providing a blank agreement does not create any documentary evidence in either favour.

46. It is further the case of the complainants that when complainant no.2 was in the process of making the outstanding payment, he was surprised to note from the letter shared by the representative of the respondent that the allotted plots have already been terminated and the amounts paid by both the complainants have already been forfeited. Perusal of letter dated 16.06.2020 annexed by the respondent itself as Annexure R-2 with reply, revealed that the address mentioned therein is "Mr. Satish Bansal, 211, Green City Dhakauli,

Zirakpur, Punjab-140603 India”, whereas the address mentioned in the Application Form for allotment of a plot attached by the complainants themselves as Annexure P-1 the address mentioned therein is “#1782, Ward No.6, Near Ganesh Blood Bank, Jyoti Nagar, Thanesar, Kurukshetra, Haryana-136118”. Complainants stated that they have not changed their address till date. As the complainants stated that they have not received such type of termination letter at the addresses available with the respondent and that they have not changed their addresses which has not been refuted by the respondent. The reason for sending the termination letter on a wrong address is best known to respondent only. On the date of hearing it is stated by respondent that they do not have any plot to offer to complainant as it was sold after the termination/cancellation by sending the alleged letter.

47. Regarding the clause that *“I/We hereby agree that post confirmation of my/our booking by the Company. I/We shall not be entitled to withdraws or surrenders the booking/allotment, for any reason whatsoever, at any point of time”* it is held that no such documentary evidence has been produced by the respondent that they have confirmed the booking of the plots allotted to the complainants. There is no allotment letter issued to the complainants, no agreement for sale and sale deed have been executed in favour of the complainants till date, except application form for booking of the plots that too submitted by the complainants themselves.

48. Further another clause reproduced by the respondent that *“...I\We hereby agree that the complete and detailed terms and conditions of the Allotment shall be provided in the Agreement to Sell”*

However, in this case no agreement for sale was entered into between the parties till date despite requests made by the complainants many times as reflected in the complaint itself and also stressed upon during the course of the arguments of their cases. Thus, this clause has also no force at this stage.

49. In view of the above arguments and facts narrated by both the parties, and that there was no plot available with the respondent to be offered to the complainants, and also the testimony during the hearing that the complainants are ready and willing to accept back the 10% amount deposited by them with the respondent but with the prescribed rate of interest as stipulated in Section 16 of the Rules of 2017 the matter was considered. It is also a fact apparent on record that the address on the termination letter sent by the respondent to the complainants was wrongly mentioned so the complainants were not aware about the cancellation.

50. In view of the above facts and discussions since the complainants are ready and willing to accept the 10% booking towards plot(s) with interest instead of possession of the plots prayed for in the complaint, agreed by respondent too and also that the respondent has not issued any allotment letter, executed agreement for sale, it is held that the complainants are entitled for refund of their deposited amount of Rs.2,25,000/- in each complaint along with interest as per Rule 16 of the Rules 2016 as the respondent has raised no objection to this effect.

51. As a result of the above discussion, these complaints are disposed of with the following directions:

GC No.0199 of 2022

52. The respondent is directed to refund the amount of Rs.2,25,000/- along with interest at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the date of deposit till the date of actual refund.

GC No.0208 of 2022

53. The respondent is directed to refund the amount of Rs.2,25,000/- along with interest at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the date of deposit till the date of actual refund.

54. It is also further directed that the refund along with interest should be made by respondent within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order and submit a compliance report to this Authority about releasing the due amount along with interest as directed above accordingly.

55. It may be noteworthy that in case compliance report is not submitted by the respondent after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act.

56. The complainants are also directed to submit report to this Authority that they have received the due refund amount along with interest as directed in this order.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab