

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

Complaint No. GC No.0269 of 2023
Date of Institution :02.08.2023
Date of Decision: 04.09.2024

1. Diviya Vashishta w/o Shri Navneet Vashishta
 2. Navneet Vashishta s/o Shri Santosh Kumar Vashishta
- Both residents of House No.203, F.F., MS Enclave, Dhakoli,
Zirakpur, Sahibzada Ajit Singh Nagar, Mohali, Punjab Pin Code
140603

...Complainants


Versus

1. ATS Estate Pvt. Ltd., registered office -711/92, Deepali, Nehru Place, New Delhi-110019
2. HDFC Bank Limited, SCO No.142, First Floor, Above National Skin Hospital, Sector 5, Mansa Devi Complex, Panchkula, Haryana Pin Code 134114

....Respondents

Present: Ms. Shikha Kullar, Advocate for complainants
Shri Hardeep Singh, Advocate for Shri J.P.Rana,
Advocate for respondent no.1
Ms. Neetu Singh, Advocate for Ms. Rupali Shekhar
Verma, Advocate for respondent no.2

ORDER

 This complaint seeks for issuance of direction to respondent no.1 to refund the amount Rs.21,98,420/- which was paid to it along with interest since the complainants are not inclined to stay in the project.

2. The brief facts of the case are that complainants jointly booked Apartment No.8052 on 5th Floor in the Building No.8, Type-D in the project named "ATS Golf Meadows Lifestyle" being developed by

respondent no.1 at Derabassi, Distt Mohali, Punjab. The agreement for sale was executed on 27.06.2017. It is further contended that as per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months with a grace period of six months from the date of actual start of construction. The complainants submitted that they have made payments of Rs.21,98,420/- on time after obtaining home loan from respondent no.2/HDFC Bank Limited. It is also contended that possession of the apartment was to be delivered on 26.06.2021, however, till the date of application, possession has not been handed over to the complainants thus delivery of the same has been grossly delayed. It was further contended that Respondent no.1 has also not paid assured monthly rent of Rs.11,000/- for a period of 36 months, as per their letter dated 27 June 2017. It is therefore prayed that the complainants are since not interested to stay in the project and sought refund of the amount Rs.21,98,420/- along with interest.

3. Upon notice both the respondents appeared through their learned Advocates and submitted their replies.

4. In the reply submitted by respondent no.1, they admitted the execution of the agreement to sell on 27.06.2017; as per Form-B submitted under Section 4(2)(I)(C) of the Act, the project consisting of 15 towers and the date of completion of the project is 09 years from issuance of registration certificate; complainants could not invoke the jurisdiction of this Authority to try and decide the complaint in view of the arbitration Clause no.35 in the agreement to sell; further as per Clause 37 the Courts at Noida, Uttar Pradesh have the right to hear the dispute and

decide; a sum of Rs.2,31,000/- has already been paid as assured rental to the complainants by respondent no.1; and prayed that the complaint be dismissed with costs.

5. The learned Counsel for respondent no.2 submitted that a loan of Rs.36,46,000/- was sanctioned to the complainants and out of which the bank disbursed Rs.15,38,894/- towards the sale consideration of the apartment and Loan Agreement dated 30.06.2017 and Tripartite Agreement dated 28.06.2017 was executed between the parties. The loan account of the complainants was regular. It is mentioned in the reply that as per terms and conditions of the Tripartite Agreement, in case the developer/respondent no.1 caused breach of the obligations of Buyer's agreement, respondent no.1 firstly to refund the amount outstanding towards loan to respondent no.2/HDFC Bank Limited.

6. The learned Counsel for the complainants filed rejoinder reiterating the contents of the complaint and denying the averments raised in the reply by respondent no.1.

7. When the matter was taken up on 21.08.2024 for arguments, Ms. Shikha Khullar, learned advocate for the complainants reiterated the contents of her complaint as well as rejoinder and stated that as per Clause 14 of the agreement to sell the date of delivery of possession of the apartment was 26th June 2021 but till today possession has not been handed over to them despite making a payment of Rs.21,98,420/-, receipts of which are Annexure C-3 and Annexure C-4. The learned Counsel for the complainants also referred to Annexure C-9 an email dated 04.08.2019 whereby they asked respondent no.1 as to

when they will pay pending assured return; start of construction of Tower-8 and plans of the company to restart the construction of Tower-8. However, no response was received from respondent no.1. Thus, in view of gross delay in handing over possession of the apartment the complainants intended not to stay in the project and prayed for refund along with interest as prescribed under the Rules, 2017.

8. On the other hand, Shri Hardeep Saini, learned Advocate for respondent no.1 while reiterating the contents of his reply stated that the timeline for completion of the project as per Form-B, is nine years from the date of issuance of registration certificate. As per Annexures R-1 and R-2 attached with the reply, the registration was granted on 01.09.2017 and the ending date is 31.08.2026. The learned Counsel for respondent no.1 further stated that they have paid a sum of Rs.2,31,000/- towards assured rental to the complainants and this amount be deducted from the amount of refund, if any.

9. The learned Counsel for respondent no.2 has referred to Clause 8 of the Tripartite Agreement dated 28.06.2017 to claim her first charge on the refund amount, which is reproduced as under:

"... or in the event of cancellation of the allotment of the residential flat for any reason whatsoever, only the entire amount advanced by HDFC directly to builder will be refunded by the Builder to HDFC forthwith without any interest...."

10. I have carefully considered the rival arguments. There is no dispute regarding allotment of apartment; execution of Buyer

Agreement dated 27.06.2017 and delivery of assured possession by 26.06.2021; payment of Rs.21,98,420/- as per Annexure C-3 and C-4 issued by respondent no.1, payment of Rs.2,31,000/- by respondent no.1 to the complainants towards assured rental.

11. On the other hand, the respondent no.2 stated that a sum of Rs.4.48 lakhs is due against the complainants as on 21.08.2024.

12. Regarding the objection raised by the learned Counsel for respondent no.1 about the presence of arbitration clause, it is to be noted that an arbitration clause in the agreement between the parties does not preclude the jurisdiction of this Authority, as per the law settled by the Hon'ble Apex Court in the case of **Emaar MGF v/s Aftab Singh** (Review petition nos. 2629 and 2630 of 2018). This argument of respondent no. 1 is accordingly rejected.

13. Respondent no.1 has also argued that only the Courts at NOIDA, Uttar Pradesh would have jurisdiction to decide disputes under the agreement executed between the complainants and respondent no.1. In this regard, it is noted that the project is situated in the State of Punjab and the agreement to sell was executed between the complainants and respondent no.1 for a Real Estate project situated at Village Madhopur, Tehsil Derabassi, District SAS Nagar (Mohali). This Authority thus has the necessary jurisdiction to entertain and decide the present complaint under the Act of 2016.

14. It is noted that since respondent no.1 was unable to deliver possession within the timeline promised and agreed in the buyer agreement dated 27.06.2017 the complainants sought the relief of

refund along with prescribed interest. It is duly established on record that respondent no.1 has not handed over possession of the apartment to the complainants. Thus, the complainants are entitled for refund of their deposited amount with respondent no.1 along with interest as prescribed in Section 18(1) of the Act. For the sake of convenience, Section 18(1) of the Act is reproduced below:-

"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) ***due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, 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: (emphasis supplied)***

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.

(2) *The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*


(3) *If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."*

15. As a result of the above discussion, this complaint is accordingly allowed and respondent no.1 is directed to refund the amount of Rs.21,98,420/- along with interest at the rate of 11.90% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.90% plus two percent) prescribed in Rule 16 of the Punjab State the Real Estate (Regulation and Development) Rules, 2017 from the date of deposit till the date of actual refund.

16. However, it is made clear that the first charge on the refund amount would be towards clearing the liability arising out of the Loan Agreement dated 30.06.2017 and Tripartite Agreement dated 28.06.2017 executed between the parties. Respondent no.1 is accordingly directed to clear the complainants' dues towards HDFC Bank Limited in the first instance, and then refund the balance amount to the complainants.

17. The amount of Rs.2,31,000/- paid by respondent no.1 to the complainants towards assured rental be set off from the refund. It is also further directed that the refund along with interest should be made within the statutory time i.e ninety days stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 from the date of receipt of this order.

Announced


(Binod Kumar Singh)
Member, RERA, Punjab

