

**Before Shri Binod Kumar Singh, Member,  
Real Estate Regulatory Authority, Punjab**

1.

GC No.0268 of 2023  
Date of Institution:01.08.2023  
Date of Decision:29.11.2024

1. Sukhmani Gujral,
2. Sukhvider Singh Gujral,  
Both residents of House no. 190A, DDA MIG Flats, Rajouri  
Garden, New Delhi- 110027

....Complainants

Versus

ATS Estates Private Limited # 711/92, Deepali, Nehru Place New Delhi  
PIN Code 110019

....Respondent

2.

GC No.0277 of 2023  
Date of Institution: 09.08.2023  
Date of Decision: 29.11.2024

Chandan Chauhan, Kashish Apartments 4, Near Diet Officers Colony,  
Block C House number B 3, JBT Road, Solan, Himachal Pradesh, PIN  
Code 173212

....Complainant

Versus

1. ATS Estates Private Limited # 711/92, Deepali, Nehru Place,  
New Delhi PIN Code 110019
2. HDFC Bank Limited, SCO No.153-55, Sector 8-C, Madhya Marg,  
Chandigarh

....Respondents

3.

GC No.0288 of 2023  
Date of Institution: 16.08.2023  
Date of Decision: 29.11.2024

Karan Sharma, House number 2334, Ground Floor, Sector 22 C,  
Chandigarh, PIN Code-160022

....Complainant

Versus

1. ATS Estates Private Limited # 711/92, Deepali, Nehru Place,  
New Delhi PIN Code 110019
2. IDBI Bank Limited, Retail Assets Centre (RAC), SCO no.184,  
First Floor, Sector 37-C, Chandigarh-160036

....Respondents

4.

GC No.0307 of 2023  
Date of Institution: 27.08.2023  
Date of Decision: 29.11.2024

Vikram Singh Bisht, House No.2371, Sector 49 C, Chandigarh, PIN  
Code- 160046

....Complainant

Versus

1. ATS Estates Private Limited # 711/92, Deepali, Nehru Place,  
New Delhi PIN Code 110019
2. IDBI Bank Limited, Retail Assets Centre (RAC), SCO no.184,  
First Floor, Sector 37-C, Chandigarh-160036

....Respondents

5.

GC No.0308 of 2023  
Date of Institution: 27.08.2023  
Date of Decision: 29.11.2024

Aruna Kanwar, Aruna Cottage, Panthaghatti Chowk, District Shimla,  
Himachal Pradesh, PIN Code 171009

....Complainant

Versus

ATS Estates Private Limited # 711/92, Deepali, Nehru Place, New  
Delhi PIN Code 110019

....Respondent

6.

GC No.0357 of 2023  
Date of Institution: 03.10.2023  
Date of Decision: 29.11.2024

1. Brajinder Singh,
2. Rita Thakur  
Both residents of Khalate Tea Estate, Post Office  
Thakurdwara, Palampur, Kangra, Himachal Pradesh, PIN  
Code 176102

....Complainants

Versus

ATS Estates Private Limited # 711/92, Deepali, Nehru Place, New  
Delhi PIN Code 110019

....Respondent



7.

GC No.0360 of 2023  
Date of Institution:03.10.2023  
Date of Decision:29.11.2024

1. Pushpender Singh Mankotia,
2. Kiran Mankotia  
Both residents of House No 184/6, Sector A, Chandimandir  
Cantt. Panchkula, Haryana, PIN Code-134107

....Complainants

Versus

1. ATS Estates Private Limited # 711/92, Deepali, Nehru Place,  
New Delhi PIN Code 110019
2. HDFC Bank Limited, SCO No.153-155, Sector 8-C, Madhya  
Marg, Chandigarh-160008

....Respondents

8.

GC No.0362 of 2023  
Date of Institution: 03.10.2023  
Date of Decision: 29.11.2024

1. Harkesh Koundal,
2. Jyoti Koundal  
Both residents of House Number P36 01 AFSB, Clement Town,  
District Dehradun, Uttarakhand, PIN Code-248002

....Complainants

Versus

1. ATS Estates Private Limited # 711/92, Deepali, Nehru Place,  
New Delhi PIN Code 110019
2. HDFC Bank Limited, SCO No.153-155, Sector 8-C, Madhya  
Marg, Chandigarh-160008

....Respondents

Present: Ms. Shikha Khullar, Advocate for the complainants in all  
complaints

Shri Hardeep Saini, Advocate for Shri J.P.Rana, Advocate  
for the respondent in all complaints

**ORDER**

These 8 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. These complaints filed by the complainant(s) 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) seeking refund of their amount with interest deposited with the respondent for purchase of apartment in their project named "ATS Golf Meadows Lifestyle" (Registration Number PBRERA-SAS79-PR0007) being developed by the respondent at village Madhopur, Derabassi, District Mohali, Punjab.

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

**GC No.0268 of 2023**

4. The contents of the complaint in brief are that the complainants namely Sukhmani Gujral and Sukhvinder Singh Gujral in December 2017, had jointly booked Apartment No.8124 in building No.8, Type-E in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainants and respondent on 24.01.2018. As per its Clause 7.1 the date of delivery of the Apartment was 28.02.2022. It is further submitted that till date the complainants have made payment of Rs.18,93,071/- out of total sale consideration of Rs.38,98,143/- also by withdrawing money from Provident Fund foregoing guaranteed compounding interest. Till date, there is no sign of the apartment near completion. The respondent has grossly violated the agreement to sell and the complainants wished to withdraw from the project. The prayer of the complainants is for refund of Rs.18,93,071/- along with interest.



**GC No.0277 of 2023**

5. The contents of the complaint in brief are that the complainant namely Chandan Chauhan in March 2016, had booked Apartment No.8064 in building No.8, Type-E in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainant and respondent on 25.04.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months. It is further submitted that till date the complainant has made payment of Rs.18,78,459/- out of total sale consideration of Rs.35,40,000/- also by taking home loan. A Tripartite Agreement was also executed among the complainant, respondent and bank on 25.04.2016. Till date, there is no sign of the apartment near completion despite letter dated 06.05.2021 of the respondent claiming re-commencement of construction. The respondent has grossly violated the agreement to sell and the complainant wished to withdraw from the project. The prayer of the complainant is for refund of Rs.18,78,459/- along with interest. The respondent is also liable to pay compensation to the complainant to the tune of Rs.10.00 Lakhs.

6. In this matter, respondent no.2/HDFC Bank Limited filed short reply dated 06.11.2023 mentioning therein that out of the sanctioned loan of Rs.27,92,000/- the bank disbursed Rs.12,21,500/- to the respondent towards sale consideration of the unit. A Loan agreement was executed between the complainant and bank on 30.04.2016. The loan account of the complainant was regular.

**GC No.0288 of 2023**

7. The contents of the complaint in brief are that the complainant namely Karan Sharma in March 2016, had booked

Apartment No.8121 on 12th floor in building No.8, Type-E in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainant and respondent on 18.04.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months. It is further submitted that till date the complainant has made payment of Rs.18,18,664/- out of total sale consideration of Rs.35,40,000/-also by taking home loan from HDFC Bank Limited which was later on transferred from HDFC Bank Limited to IDBI bank Limited. The complainant has enclosed documents regarding transfer of loan from HDFC Bank Limited to IDBI bank Limited with this complaint and a fresh Loan Tripartite agreement was entered into on 19.11.2020 among the complainant, respondent and IDBI bank Limited. Till date, there is no sign of the apartment near completion. The respondent has grossly violated the agreement to sell and the complainant wished to withdraw from the project. The prayer of the complainant is for refund of Rs.18,18,664/- along with interest.

8. In this matter, respondent no.2/HDFC Bank Limited filed short reply dated 02.11.2023 mentioning therein that a tripartite and loan agreement was executed between the complainant and bank on 18.04.2016 and 30.04.2016 respectively. The loan was later on transferred to the IDBI Bank Limited on 09.10.2019 resultantly the inter-se obligation between the complainant and HDFC Bank Limited have already been concluded. However, it is noted that despite service of notice on 06.12.2023 there was no representation on behalf of IDBI Bank Limited/ respondent no.3 till today.



**GC No.307 of 2023**

9. The contents of the complaint in brief are that the complainant namely Vikram Singh Bisht in February 2016, had booked Apartment No.8111 on the 11<sup>th</sup> Floor in building No.8, Type E in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainant and respondent on 14.04.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months from the date of actual start of construction. It is further submitted that till date the complainant has made payment of Rs.18,18,613/- out of total sale consideration of Rs.35,40,000/- also by taking home loan from the bank namely HDFC Bank Limited which was later on transferred from HDFC Bank Limited to IDBI bank Limited. The complainant has enclosed documents regarding transfer of loan from HDFC Bank Limited to IDBI bank Limited with this complaint. Till date, there is no sign of the apartment near completion. The respondent has grossly violated the agreement to sell and the complainant wished to withdraw from the project. The prayer of the complainant is for refund of Rs.18,18,613/- along with interest.

10. In this matter, respondent no.2/HDFC Bank Limited filed short reply dated 06.11.2023 mentioning therein that out of the sanctioned loan of Rs.27,92,000/- the bank disbursed Rs.12,21,477/- to the respondent towards sale consideration of the unit. A Tripartite and Loan agreement was executed between the complainant and bank on 14.04.2016 and 28.04.2016 respectively. The loan was later on transferred to the IDBI Bank Limited on 20.06.2019 resultantly the inter-se obligation between the complainant and HDFC Bank Limited have already been concluded. It is further stated in its reply that the

complainant/ borrower has already prepaid the loan availed from HDFC Bank Limited by availing loan from IDBI Bank Limited. Notice was served upon respondent no.3/IDBI Bank on 06.12.2023. However, it is noted that as per the interim order dated 01.02.2024, learned Counsel for the complainant has not claimed any relief against respondent no.3/IDBI Bank Limited and accordingly respondent no.3 was dropped from the array of the respondents.

**GC No.0308 of 2023**

11. The contents of the complaint in brief are that the complainant namely Aruna Kanwar in October 2016, had booked Apartment No.8112 on 11<sup>th</sup> Floor in Tower/Building No.8 Type 'D' in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainant and respondent on 04.11.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months from the date of actual start of construction. The letter regarding start of construction was also issued by the respondent to the complainant on dated 13.02.2017. It is further submitted that till date the complainant has made payment of Rs.23,46,000/- out of total sale consideration of Rs.45,40,000/- Till date, there is no sign of the apartment near completion despite letter dated 13.02.2017 of the respondent. The respondent has grossly violated the agreement to sell and the complainant wished to withdraw from the project. The prayer of the complainant is for refund of Rs.23,46,000/- along with interest.

**GC No.0357 of 2023**

12. The contents of the complaint in brief are that the complainants namely Brajinder Singh and Rita Thakur in August,



2016, had jointly booked Apartment No.8081 on 8<sup>th</sup> floor in building No.8, Type E in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainants and respondent on 19.12.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months from the date of actual start of construction. It is further submitted that till date the complainants have made payment of Rs.17,83,293/- out of total sale consideration of Rs.34,63,000/- also by withdrawing money from Provident Fund foregoing guaranteed compounding interest. Till date, there is no sign of the apartment near completion. The respondent has grossly violated the agreement to sell and the complainants wished to withdraw from the project. The prayer of the complainants is for refund of Rs.17,83,293/- along with interest.

**GC No.0360 of 2023**

13. The contents of the complaint in brief are that in February 2016, the complainants namely Pushpender Singh Mankotia and Kiran Mankotia have jointly applied for an apartment under the Special Scheme for Government Employees issued by the respondent. The application of the complainants was accepted and they were allotted Apartment No.8063 on the 6<sup>th</sup> Floor in building No. 8 Type 'D' in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainants and respondent on 20.04.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months. It is further submitted that till date the complainants have made payment of Rs.23,39,501/- out of total sale consideration of Rs.45,40,000/- also by taking home loan from HDFC Bank Limited. A Tripartite Agreement was also executed

between the complainants, respondent and bank. Till date, there is no sign of the apartment near completion. The respondent has grossly violated the agreement to sell and the complainants wished to withdraw from the project. The prayer of the complainants is for refund of Rs.23,39,501/- along with interest.

14. In the short reply dated 16.11.2023 filed by respondent no.2/HDFC Bank Limited, it is stated that the complainants availed loan of Rs.35,92,000/- which was subsequently reduced to Rs.15,71,500/- and the loan was disbursed in favour of the complainants. A Tripartite and Loan agreement was executed between the complainants and bank on 20.04.2016 and 30.04.2016 respectively. It is further stated that the complainants/borrowers have already repaid the loan.

**GC No.0362 of 2023**

15. The contents of the complaint in brief are that the complainants namely Harkesh Koundal and Jyoti Koundal in March 2016, had jointly booked Apartment No.8073 on the 7<sup>th</sup> Floor in building No.8, Type G in the project named "ATS Golf Meadows Lifestyle" and an Agreement for Sale was entered into between the complainants and respondent on 25.03.2016. As per Clause 14 of the agreement for sale the date of the delivery was fixed at 42 months from date of start of construction with a grace period of 6 months from the date of actual start of construction. It is further submitted that till date the complainants have made payment of Rs.23,38,471 /- out of total sale consideration of Rs.45,40,000/- also by taking loan from Bank and signed tripartite agreement. Till date, there is no sign of the apartment near completion. The respondent has grossly violated the agreement to sell and the complainants wished to withdraw from the



project. The prayer of the complainants is for refund of Rs.23,38,471/- along with interest.

16. In the reply dated 15.11.2023 filed by respondent no.2 it is stated that a sum of Rs.35,92,000/- was sanctioned to the complainants out of which the bank has disbursed Rs.15,37,400/- towards sale consideration of the unit. A Tripartite and Loan agreement was executed between the complainants and bank on 15.06.2016 and 12.07.2016 respectively. It is also stated that the account of the complainants is regular. It is further stated in the reply that in case the allotment is cancelled and refund is allowed, in that eventuality the HDFC Bank Limited would have right towards the amount so refunded towards the apportionment of the loan amount already disbursed.

17. The complainants in support and strengthen their case have relied upon various documents including Agreement to sell, tripartite agreement, loan agreement, loan documents and letter regarding recommencement of construction.

18. Upon notice Shri Hardeep Saini, Advocate appeared for the respondent in each complaint and submitted similarly situated reply in each complaint case. The only difference is about the allotment of apartment number, floor, building/tower, Type, loan availed from different banks and payment thereof, and certain additional grounds. Accordingly, reply of GC No.0268 of 2023 titled "Sukhmani Gujral Vs. ATS Estates Pvt. Ltd." is being discussed here.

19. In the reply dated 16.11.2023, the learned Counsel for the respondent admitted developing of the project namely "ATS GOLF MEADOWS LIFE STYLE" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab, entering into agreement for sale on

24.01.2018 with the complainants and allotment of Apartment No. 8124, having carpet area of 935 Sq. Ft. on 12<sup>th</sup> floor of Tower No. 08, in the above said residential project. Respondent while introducing about the Act stated that respondent got the said project registered with this Authority vide Registration number PBRERA-SAS79-PR0007 and as per Form-B, the completion time of the Project consisting of 15 Towers, has been declared to be "9 years" i.e by 30.08.2026. Respondent has also reproduced Sections 18, 19, 31, 71, and 72 of the Act in the reply which are not being repeated here for the sake of brevity.

20. Apart from above submissions, the learned Counsel for the respondent has also taken preliminary objections that no cause of action arisen in favour of the complainants. Respondent referred Section 4 of the Act of 2016 and as per Form-B, 09 years is the completion date of the project from the date of registration and these 9 years would expire only on 30.08.2026. Thus, as on date, the complainants have no cause of action to file the instant complaint before this Authority. It is also submitted that this Authority has no jurisdiction to entertain and try the complaint for the alleged violations referred in the instant complaint. It is also stated by the respondent that the provisions of the Act of 2016 which are beneficial to the allottees as well as to the promoters should also be read into the agreements. He also referred Section 19(4) of the Act of 2016 whereby the complainants shall entitle to claim refund along with interest as may be prescribed, if the promoter failed to give possession of the apartment. The learned Counsel for the respondent also reproduced Section 19(3) of the Act of 2016. Thus, no cause of action arisen in favour of the complainants to seek refund and interest thereon. It is further contended by the respondent that the delay in



handing over the Apartment relates to violation of a term of the agreement for sale and it cannot be termed as a violation of the Act, Rules and Regulations. It is also contended that there is no provision in the Act, Rules or the Regulations to initiate penal proceedings for non-adherence to the completion schedule given by the promoter in the Buyer's agreement as it is dependent on numerous factors, like *force majeure*, default on the part of the allottees etc. The learned Counsel for the respondent also referred Section 18 and Section 19 of the Act of 2016 that while providing measures to compensate an allottee refers to violation of the agreement for sale and not violation of Act and Rules and Regulations. It is further pleaded by learned Counsel for the respondent that the provisions of the Act of 2016 cannot be read into the already executed contracts between a promoter carries substantive rights of each party to the contract conferred upon at the time of execution of the contract. He has placed reliance on the law laid down by the Hon'ble Supreme Court in the case of "M/s Shanti Conductors (P) Ltd. Anr. Vs. Assam State Electricity Board & Ors.", wherein it has been held that liability to pay higher rate of interest not to operate retrospectively rather, the provisions are prospective in nature. He has also referred and reproduced Section 62 of the Indian Contract Act, 1873. The learned Counsel for the respondent also referred the judgement titled "*Bharti Knitting Vs. DHL*" of the Hon'ble Apex Court. The respondent has also cited the judgement of the Hon'ble Bombay High Court in the case titled "*Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.*" (W.P 2737 of 2017), reported as 2018(1) RCR (Civil) 298 and produced its para 256 which is not being reproduced here for the sake of brevity where it has been held that "*In other words, by giving opportunity to*

*the promoter to prescribe fresh time line under Section 4(2)(I)(C) he is not absolved of the liability under the agreement for sale".*

21. On merits, while reiterating the contents of preliminary submissions and objections, the learned Counsel for the respondent admitted the developing of the project namely "ATS GOLF MEADOWS LIFESTYLE" at village Madhopur, Tehsil Dera Bassi, SAS Nagar Mohali and stated that booking of Apartment bearing No. 8124, having carpet area of 935 Sq. Ft. on 12<sup>th</sup> floor of Tower No 08, in the above said residential project "ATS GOLF MEADOWS LIFE STYLE", is a matter of record. It is further stated that the complainants be put to strict proof regarding making payments as mentioned in the complaint. Learned Counsel for the respondent further pleaded that the respondent paid Rs.1,28,000/- towards rental income to the complainants as agreed between the complainants and respondent. It is further submitted that handing over possession of the apartment in question was subject to fulfilment of various terms and conditions of buyer's agreement and the construction delayed due to non-deposit of timely payments by the Allottees, however the respondent is making its earnest efforts to deliver possession shortly. While replying to the averment of the complainants regarding withdrawal of huge amount from provident fund it is stated that it is a matter of record and denied violation of their brochure as well as Agreement to sell. The instant complaint is bereft of any merit and the same is liable to be dismissed as the complainants are not entitled for any relief as claimed by them in the complaint.

22. In other replies filed by the respondent, the Counsel for the respondent also referred Clause 35 and Clause 37 in the other agreements whereby any dispute between the parties shall be settled amicably by mutual discussion and that the courts at Noida, Uttar



Pradesh have the exclusive right and jurisdiction to hear the dispute and decide the matter.

23. Learned Counsel for the complainant(s) filed rejoinder in all the complaints reiterating the contents of the complaint and controverted the contents of the reply submitted by the respondent/ATS Estates Private Limited.

24. The undersigned heard the arguments of both the counsels on the stipulated date.

25. For the sake of convenience the following table is drawn:-

S. No	GC No.	Date of Agreement to sell	Name of bank from where Loan availed	Date of Tripartite agreement	Loan granted (Rs. in lakhs)	Loan disbursed by bank	Amount deposited by the complainant	Rental income
1.	0268/23	24.01.18	--	--	--	--	18,93,071	1,23,000
2.	0277/23	25.04.16	HDFC Ltd.	25.04.16	27.92	12,21,500	18,78,459	--
3.	0288/23	18.04.16	IDBI bank	19.11.20	27.92	--	18,18,664	--
4.	0307/23	14.04.16	HDFC Ltd.	14.04.16	27.92	12,21,477	18,18,613	--
5.	0308/23	04.11.16	--	--	--	--	23,46,000	--
6.	0357/23	19.12.16	--	--	--	--	17,83,293	--
7.	0360/23	20.04.16	HDFC Ltd.	20.04.16	35.92	15,71,500 (already repaid)	23,39,501	--
8.	0362/23	25.03.16	HDFC Ltd.	15.06.16	35.92	15,37,400	23,38,401	--

26. Learned Counsel for the complainant(s) has argued that the complainant has made payments (as per above table) and since the respondent failed to adhere to the terms and conditions of the agreement and particularly the delivery of possession of the apartment, the complainant has lost faith in the project being developed by the respondent and wished to withdraw from the project. Learned Counsel for the complainant further argued that in the complaints (as per above table), the complainant(s) have availed loan from the banks and the banks disbursed the loan amount directly to the respondent on behalf of the complainant(s) and as per one of

the clauses of the Tripartite Agreement entered into between the complainant(s), respondent and the bank, first charge on the refund amount is of the respective bank and after clearing the loan account(s) of the complainant(s), the respondent be directed to refund the balance amount along with interest thereon thereafter to the complainant(s).

27. Learned Counsel for the respondent reiterated the contents of his reply and argued that the respondent is making earnest efforts to deliver the possession of the apartment to the complainant(s). Learned Counsel for the respondent argued that booking of apartment/allotment, signing of agreement to sell, tripartite agreement and payment made by the complainants are matter of record. He also argued that as per Form-B, 09 years has been granted by this Authority for completion of the project and these 9 years would expire only on 30.08.2026. Thus, as on date, the complainant(s) has no cause of action to file the instant complaint before this Authority and the same be dismissed with costs. He further argued that in case the complaints of the complainants are being allowed, an amount of Rs.1,28,000/- paid to the complainant in GC No.0268 of 2023 (Sukhmani Gujral Vs. ATS Estates Pvt. Ltd.) as rental income be set off from the due amount to be paid to those complainants.

28. The undersigned considered the rival contentions of the parties and have perused the record available on the file.

29. There is no dispute about allotment of apartment, sale price of the apartment, execution of agreement to sell, and entering into Tripartite Agreement between the complainant, respondent and bank.



30. Perusal of the agreement to sell dated 24.01.2018 (GC No.0268 of 2023) revealed that possession was to be handed over to the complainants on or before 28.02.2022 as per Clause 7.1 of the above said agreement. However, it was argued by the complainants that till date possession has not been handed over to them. The complainants have made payment of Rs.18,93,071/- till date after withdrawing money from Provident Fund account foregoing the guaranteed compounding interest. There is no sign of the apartment near completion and the respondent has grossly violated the terms and conditions of the agreement to sell. It is further the case of the complainants that since the respondent failed to hand over the apartment, they are not interested to have possession of the apartment and wished to withdraw from the project and prayed for return of the money deposited by them with the respondent along with interest thereon.

31. on the other hand, the main stress of the learned Counsel for the respondent was upon the completion date of the project granted by this Authority i.e. 01.09.2026.

32. However, perusal of Clause 7.1 – Schedule for possession of the said Apartment- clearly revealed that “the promoter agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. “....The promoter..... assures to hand over possession of the Apartment by 28<sup>th</sup> February 2022”.

33. The Hon'ble Supreme Court has already held in "*Imperia Structures Ltd. v. Anil Patni and Anr*" - Civil Appeal 3581-3590 of 2020) "that the relevant date for delivery of possession to an allottee is the date mentioned in the agreement for sale and not the date till which the registration of the project is valid". Thus, this argument of

learned Counsel for the respondent has no merit and is accordingly rejected.

34. It is also worth to mention here that there was no whisper about the start of construction of particular tower during the course of the arguments. Even, there is not an iota of evidence placed on record either by the complainants or the respondent about the date of start of construction of the particular Tower/Building. It is the onerous duty of the respondent to place on record evidence about the start of construction of buildings wherein the apartments of the complainants are situated. It is the consistent case of the complainants that there was no sign of the apartment having reached any stage near completion so they do not wish to have possession of the apartment(s) and accordingly prayed for refund along with interest thereon.

35. The next argument raised by the learned Counsel for respondents is about the presence of an arbitration Clause in the Agreement. However, this Authority had already held in various orders that presence of an arbitration clause in the agreement entered into 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 is also without merit.

36. Further the argument of respondent that only the Courts situated at NOIDA, Uttar Pradesh has the jurisdiction to adjudicate upon the disputes as per Clause 37 mentioned in the agreement is also without any substance. It is a matter of record that the project "ATS Golf Meadows Lifestyle" is situated in the State of Punjab and the Agreements entered into between the complainant(s) and respondent is 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.

37. The objection raised by learned Counsel for the respondent that the complainant(s) be put to strict proof regarding payments as mentioned in the complaint. Perusal of the annexures C-3 to C-5 attached by the complainants with the complaint, copy of which was enclosed with the notice at the time of its issuance to the respondent, which are payment receipts issued by the respondent itself with the stamp of the respondent company duly signed by the authorised signatory, clearly revealed that the complainants have made payment of Rs.18,93,071/- to the respondent regarding the apartment in question. Thus, this objection of the learned Counsel for the respondent has no legs to stand.

38. From the above it is apparent on record that since the respondent has miserably failed to deliver possession of the apartment within the timeline agreed in the agreement for sale dated 24.01.2018, accordingly the complainants filed the instant complaint seeking refund of their deposited amount along with interest. Under these circumstances, the complainants cannot be compelled to wait indefinitely as the earlier time frame mentioned by respondent in the agreement dated 24.01.2018 has not been fulfilled by it and no definite future time line has been given by it so far. Thus, it is held that the complainants are entitled for refund of their deposited amount with respondent along with interest in view of Section 18(1) of the Act, the relevant portion of which is reproduced below:

"18. (1) ..

(a) ...

- (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)***

...."

39. As a result of the above discussion, all these eight complaints are accordingly allowed and respondent no.1/ATS Estates Pvt Ltd. is directed to refund the amount 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 as detailed below:

**GC No.0268 of 2023**

40. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.18,93,071/- to the complainant(s) along with interest as detailed in preceding para No.39. It is also made clear that amount of Rs.1,28,000/- paid as rental income to the complainant(s) be set off from the due amount payable to the complainant(s) in this complaint.

**GC No.0277 of 2023**

41. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.18,78,459/- to the complainant(s) along with interest as detailed in preceding para No.39. As far as the claim of compensation sought by complainants is concerned, the complainants



are at liberty to approach the learned Adjudicating Officer, RERA, Punjab by filing their complaint in Form 'N'.

**GC No.0288 of 2023**

42. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.18,18,664/- to the complainant(s) along with interest as detailed in preceding para No.39.

**GC No.307 of 2023**

43. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.18,78,613/- to the complainant(s) along with interest as detailed in preceding para No.39.

**GC No.0308 of 2023**

44. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.23,46,000/- to the complainant(s) along with interest as detailed in preceding para No.39.

**GC No.0357 of 2023**

45. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.17,83,293/- to the complainant(s) along with interest as detailed in preceding para No.39.

**GC No.0360 of 2023**

46. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.23,39,501/- to the complainant(s) along with interest as detailed in preceding para No.39. It is worth to mention here that HDFC Bank Limited/respondent no.2 clearly admitted in para no.2 of its reply that the complainants/borrowers have already repaid the loan and loan account of the complainants stand repaid and they have attached Annexure R-2/3 a copy of account statement dated

16.11.2023 for the period from 01.04.2020 till 31.03.2021 showing closing balance as '0' in this respect.

**GC No.0362 of 2023**

47. The respondent/ATS Estates Private Limited is directed to refund the amount of Rs.23,38,471/- to the complainant(s) along with interest as detailed in preceding para No.39.

48. However, it is made clear that the first charge on the refund amount would be towards clearing the liability arising out of the Tripartite Agreement(s)/Loan Agreement(s) entered into among/between the complainant(s), respondent and bank wherever it is applicable. Respondent no.1/ATS Estates Pvt. Ltd. is accordingly directed to clear the complainants' dues towards HDFC Bank Limited/IDBI Bank Limited in the first instance, and then refund the balance due amount to the complainant(s).

49. It is also further directed that the refund along with interest should be made by the respondent no.1/ATS Estates Pvt. Ltd. to the complainant(s) within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 2017 from the date of receipt of this order and submit a compliance report to this Authority about releasing the amount along with interest as directed accordingly.

50. It may be noteworthy that in case compliance report is not submitted by the respondent no.1/ATS Estates Pvt. Ltd. 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.

51. The complainant(s) is also directed to submit report to this Authority that they have received the amount along with interest as



directed in this order. Till then the said complainant(s) shall have the charge on the allotted Apartment/unit. The complainant(s)/allottee(s) is directed to execute a cancellation deed on receipt of full payment of refund and interest thereon from the respondent no.1/ATS Estates Pvt. Ltd thereafter.

Announced



(Binod Kumar Singh)  
Member, RERA, Punjab

RERA, Punjab