

**BEFORE SHRI ARUNVIR VASHISTA, MEMBER
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No. GC No.0393 of 2022UR

Date of Institution: 21.07.2022

Dated of Decision: 14.07.2025

Rajendra S. Bhagwat son of Shreenivas Bhagwat, aged 59 years, resident of B-1 Swarnjali CHS, Shivtirath Nagar, Paud Road, Kothrud, Pune City, Pune, Maharashtra-411038
...Complainant

Versus

1. M/s ATS Estates Pvt. Ltd., ATS Tower, Plot 16, Gautam Buddh Nagar, Uttar Pradesh, Pin Code-201301
2. ATS Infrastructure Limited, 711/92, New Delhi-110019
3. ATS Promoters and Builders Private Limited, 711/92, New Delhi-110019

...Respondent

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

Present: Mr. Ripudaman Singh Advocate representative for
the complainants
Mr. Hardeep Saini Advocate representative for
the respondent

ORDER

The present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the respondent promoter seeking refund of the amounts paid by the complainant alongwith interest from the respective dates of deposits till actual realization on account of delay in handing over possession of plot in the project 'ATS Golf Meadows Lifestyle' situated in village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab.

2. The gist of the complaint is that complainant booked plot no.152 measuring 145.83 Sq. yards in the project 'ATS Golf Meadows Lifestyle' vide allotment letter dated 19.05.2014. The buyer's agreement dated 19.05.2014 was executed by the parties containing the detailed terms and conditions for the intended sale of the plot. The total sale consideration of the plot was mentioned as Rs.27,41,604/-. The complainant made payments as per payment plan through different cheques towards the sale consideration as acknowledged by the respondent through receipts. As per buyer builder agreement the due date for handing over possession of the plot was within 36 months i.e. by June, 2017. The complainant from time to time had been asking the respondent for delivery of possession but the project was incomplete till date. The complainant feeling dissatisfied because of the unnecessary delay in completion of the project chose to withdraw from the project and seek refund of the amount paid alongwith interest. Hence, the present complaint.

3. Upon notice respondent M/s ATS Estates Pvt. Ltd. put in appearance and contested the complaint by taking preliminary objections regarding maintainability of the complaint, concealment of facts, cause of action, non-joinder of necessary parties and jurisdiction of RERA being barred. On merits booking of the plot in question and execution of plot buyer agreement was admitted by the promoter, however it was submitted that on 30.10.2015, the respondent gave offer of possession of plot in question to the complainant but he did not come forward to take possession and to get the conveyance deed/ sale deed registered in his favour. The

respondent, thereafter also issued various offers of possession to the complainant but he did not pay any heed. Respondents promoters denied any deficiency on their part. All other allegations made in the complaint have also been denied being wrong. It was then prayed for dismissal of the complaint.

4. Complainant filed rejoinder, wherein the averments of the respondents in their written reply were denied and those of the complaints were reiterated.

5. While putting forth case of complainant it was argued by his learned counsel that earlier the ATS Golf Meadow Lifestyle project was an illegal project but was later got regularized by the respondents but the complainant was kept in dark by the respondents who did not disclose all these facts at the time of executing an agreement to purchase the plot in their said project. Thus, the agreement between them was executed on 19.05.2014 and an allotment letter of even date was issued in his favour. The total sale consideration of the plot was Rs.27,41,604/- and complainant made entire payment as per payment plan through different cheques. As per the said agreement the due date for handing over possession of the plot was within 36 months there-form i.e. by June 2017. Complainant had been asking for the delivery of possession of the plot but the project was incomplete till date. As such even if any offer allegedly made by the respondent for delivery of possession in an incomplete project was not a valid offer as has been observed by Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, Civil Appeal**

Nos.2809-2810 of 2024 decided on 6 September, 2024. The project was still not completed and there were no basic amenities even provided so far and it being so he chose to withdraw from the project and validly seeks to refund of his amount paid alongwith interest as per the provisions of RERD Act. The objection that has been raised by the respondent in his reply that RERD provisions were neither applicable to his case nor the RERA Authority had any jurisdiction to adjudicate upon the matter is without any substance or weight. His claim for the refund is fully maintainable and RERD provisions were fully applicable since the project was still incomplete and no completion certificate had been obtained so far from the competent authority.

6. While countering above submissions it was argued by the learned counsel for the respondents that first of all the complaint and claim of the complainant was not maintainable because of the fact that RERD provisions did not apply to the present case. The respondent got his colony regularized in January 2014 upon paying up all the charges as well as compounding fee and the complainant agreed to purchase a plot vide agreement to sell dated 19.05.2014 after the colony developed was regularized. After the regularization of the project the duty to provide all the essential and basic amenities was that of Municipal Authority since all the compounding charges stood paid and no completion certificate was to be obtained nor was given any. As such, the complaint against respondents was not even maintainable for the reason of non-joinder of necessary party which was M.C. Authority in the present case. As nothing was

left to be done on the part of respondents, an offer was made firstly to complainant for taking possession in the year 2015 itself. Despite the offer of delivery of possession was being made time and again thereafter but complainant failed to take possession. And hence, he was not entitled to any refund as has been so claimed nor RERD provisions were applicable to the case in hand. So much so, the respondent's project was still not registered with RERA nor there was any need for that.

7. The above submissions and contentions have been considered and examined. Upon doing so, this Bench of the Authority finds no weight or substance at all in the opposing contentions put forth by the respondent side. Irrespective of whatever has been submitted by the respondents, one thing is admitted since not denied or disputed that last payment of total sale consideration of the plot agreed to be sold was made by the complainant to respondent on 30.06.2017. It means that the sale of the plots in the colony was still taking place. As such the project in question was still an ongoing project at the time of RERD Act coming into force. The project was thus required to be registered with the RERA and it cannot be concluded that the project did not come in the jurisdiction of RERD Act and its provisions were not applicable to it. This contention on behalf of the respondents is found to be without any substance that as the project/ colony was since already regularized when agreement to sell between the parties took place it did not require any completion certificate etc. as all developments including providing basic amenities therein was the responsibility of

M.C. concerned since all the charges as well as compounding fee was paid to it at the time of getting the colony regularized. It is a futile argument on the part of respondents that they had been making offer of possession of the plot in question to complainant much before the agreed due date of delivery and it was complainant who failed to come forward to take the possession and get the conveyance deed registered. As has been categorically observed by the Hon'ble Supreme Court of India in **Dharmendra Sharma V/s Agra Development Authority, Civil Appeal Nos.2809-2810 of 2024 decided on 6 September, 2024** that in the absence of requisite completion certificate the offer of possession even if made is not valid one. In the case in hand, no completion certificate was of course there with the promoter, who could not have possibly escaped from his that obligation by putting forth this contention that his colony was since got regularized and it became the duty of Municipal Council concerned to develop and provide essential services and other basic amenities and no completion certificate was either given by the competent authority nor was required after issuance of regularization certificate by it. Besides, Municipal Council is also not a necessary party in the matter as the agreement to sell was between complainant and respondent being promoter. As has been observed that even if no completion certificate was required to be there with the respondents but still it was supposed to get itself registered with RERA it being an ongoing project since was still in the process of being sold. It being so, the complainant is found to be entitled to seek refund alongwith prescribed interest as per Section

18(1) of the Act as he intends to withdraw from the project as possession was still not handed over although its delivery claimed to have been offered and the sale being not complete as conveyance deed was not executed thereafter. Accordingly, he is held to be entitled to claim refund from the date of making full and final payment.

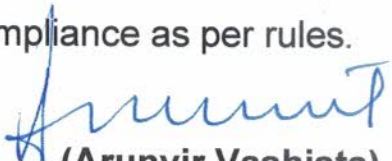
8. Now, on the question as to from which date the interest should accrue on the total sale consideration amount paid i.e. liable to be refunded to the complainant, this Bench of the Authority is of the considered view that it should start from the date last payment towards total sale consideration was made by the complainant to the respondents as on that date possession of the plot is supposed to be delivered and conveyance deed was to be executed thereupon.

9. As a result of the above discussion, the complaint is accepted and the respondents are directed to refund the amount deposited by the complainant along with interest thereon at the prescribed rate (today's highest MCLR rate plus 2%) from 30.06.2017 i.e. the date of last deposit till the date of its refund. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

10. Before parting with this order, it is observed that respondent/ promoter was apparently indulged in the sale purchase of the plots by receiving the booking amount from the general public without getting his project registered with RERA which is a clearcut violation of Section 3 of the Act. As such proceedings under Chapter

VIII for violation of Section 59 of the RERD Act are liable to be initiated against the respondent/ promoter. Registry is accordingly directed to initiate separate proceedings against the respondent/ promoter for violation of Section 59 of the Act. File be consigned to the record room after necessary compliance as per rules.

Announced: 14.07.2025


**(Arunvir Vashista),
Member, RERA, Punjab.**