

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

Complaint No. GC No.0009 of 2023
Date of Institution : 17.01.2023
Date of Decision: 28.01.2025

1. Molly B.S., wife of Sh. Amit Bharti,
2. Amit Bharti son of Shri Ashok Kumar,
Both residents of Bharti Hospital, Budh Vihar, Chak Bir Sarkar
Road, Muktsar, Punjab, PIN Code 152026

...Complainant

Versus

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

....Respondent

Present: Shri Suresh Kumar, Advocate for complainants
Shri Hardeep Singh, Advocate for Shri J.P.Rana, Advocate
for respondent

ORDER

This complaint was filed in Form 'M' on 17.01.2023 by the complainants in their individual capacity 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, 2016 , (hereinafter referred to as the Rules of 2017), against the respondent M/s ATS Estates Pvt. Ltd. seeking refund along with interest on the amount paid for the purchase of Apartment.

2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rules of 2017 are reproduced as under:

"31. Filing of complaints with the Authority or the Adjudicating Officer.-- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations".

"Rule 36. Filing of complaint with the Authority and inquiry by the Authority.[Section 31,71 (1) and 84(2)(zc)]-- (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated".

3. The brief facts submitted by the complainants in their complaint are that -

3.1 They booked the Apartment No.9211 having carpet area of 936 square feet, Type E, on 21st Floor in Tower No.9 (Building) in the project named "ATS Golf Meadows Lifestyle" situated at village Madhopur, Tehsil Derabassi,

District Mohali Punjab and paid Rs.1,00,000/- to the respondent vide cheque No.BKIDN190311122375 dated 31.1.2019 and acknowledged by Receipt dated 5.2.19 (Annexure-2).

- 3.2 The respondent intimated the complainants vide its letter dated 6.2.2019 (Annexure-3) that the process for provisional allotment and booking will be confirmed once the Agreement to sell was executed after the realization of the above said cheque.
- 3.3 Vide letter dated 7.2.2019 (Annexure-4) the respondent demanded Rs.3,16,314/- as per the payment plan, which was paid vide receipt dated 14.2.2019(Annexure-5).
- 3.4 After the provisional allotment of Flat No.9211, an Agreement for sale dated 18.2.2019 was entered into between the complainants and respondent.
- 3.5 The total price of the flat was agreed at Rs.41,63,150/- including of taxes.
- 3.6 As per Clause 7.1 of the agreement for sale, possession was to be handed over by 31.8.2022. But the same has not been delivered to the complainants.
- 3.7 It is alleged that on various visits at the site, the complainants found that the respondent had not started the construction work.
- 3.8 Accordingly, the complainants requested the respondent for refund of amount paid by them and also to cancel the

apartment allotted but the respondent did not refund the amount.

3.9 The complainants submitted a representation dated 27.10.2020 and also a legal notice dated 2.8.2021 seeking refund of amount but the respondent did not refund the amount.

3.10 It is alleged that possession is still not ready as per the agreement for sale and till date the construction work of the project is not completed and the project is under construction.

3.11 It is further alleged by the complainants that the respondent has violated the provisions of Section 11, 18 and 19 of the Act of 2016.

4. It is the prayer of the complainants that the respondent be directed to refund the amount of Rs.4,16,314/- alongwith interest from the date of payment till its realization as per the Act of 2016. In support of their case, the complainants have attached various documents i.e. application for booking, payment receipts, copy of confirmation of booking, demand letter, agreement for sale, representation and legal notice with their complaint as Annexures C-1 to C-8 respectively.

5. Upon notice, Shri Hardeep Saini, Advocate appeared for Shri J.P. Rana Advocate for respondent and submitted his Power of Attorney. Reply dated 01.11.2023 was filed by respondent in which the execution of Agreement to sale with the complainant on 18.2.19 for the apartment mentioned by the complainant was admitted. However, the following points were raised:

- 5.1 In the preliminary submissions, respondent admitted developing of project 'ATS Golf Meadows Lifestyle" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab.
- 5.2 Entering into a buyer agreement with the complainants on 18.02.2019 for residential apartment No.9211, on 21st Floor, Tower No.9, admeasuring super area of 936 sq. ft at the residential project 'ATS Golf Meadows Lifestyle' at Dera Bassi, SAS Nagar, Mohali, Punjab was also admitted.
- 5.3 Respondent while introducing about the Act of 2016 stated that they 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 01.09.2026.
- 5.4 Respondent has also relied upon Sections 18, 19, 31, 71, and 72 of the Act of 2016 in their reply.
- 5.5 It is alleged that the complainants have no cause of action to file the present complaint as the completion time for completion of project is "nine years".
- 5.6 It is further contended that this Authority has no jurisdiction to entertain and decide the complaint for the alleged violations mentioned therein.
- 5.7 It is also alleged 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.

5.8 The respondent also referred to Section 19(4) of the Act of 2016 whereby the complainants shall be entitled to claim refund along with interest as may be prescribed, if the promoter failed to give possession of the apartment. The Counsel for the respondent also reproduced Section 19(3) of the Act of 2016 and also stressed that the completion time of the project is nine years, thus, no cause of action arisen in favour of the complainants to seek refund and interest thereon at this stage and can seek this relief only after 01.09.2026.

5.9 It is further alleged that the delay in handing over possession of the Apartment relates to violation of a term of the agreement for sale and it cannot be termed as a violation of the Act of 2016, Rules and Regulations. It is contended that there is no provision in the Act of 2016, Rules or the Regulations to initiate penal proceedings for non-adherence to the completion schedule as it is dependent on numerous factors, like *force majeure*, default on the part of the allottees etc. The learned Counsel for these respondents 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 of 2016 and Rules and Regulations.

5.10 The Counsel for the respondent relied upon the decision of "*M/s Shanti Conductors (P) Ltd. Anr. Vs. Assam State Electricity Board & Ors.*", and contended that the provision

of RERA cannot be read into the already executed contract and as the Legislation is always prospective, the complainants cannot invoke the jurisdiction of this Authority on the agreement already executed. It is held by the Hon'ble Supreme court in the case referred above that liability to pay higher rate of interest do not operate retrospectively, rather the provisions are prospective in nature.

5.11 The respondent also relied upon Section 62 of the Contract Act wherein it has been held that if the parties to a contract agree to substitute a new contract, the original contract need not be performed.

5.12 The Counsel for the respondent also relied upon 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 wherein in Para 256 it was held as under:

"256. 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."

On merits, the contents of preliminary objections and submissions have been reiterated. However, it is added that

5.13 Booking of Apartment No.9211 having carpet area of 936 square feet, Type E, on 21st Floor in Tower No.9 (Building) in the project named "ATS Golf Meadows Lifestyle" situated

at village Madhopur, Tehsil Derabassi, District Mohali Punjab is a matter of record.

5.14 The respondent denied the payments made by the complainants and asked for strict proof of the same.

5.15 It is alleged by the respondent that there was delay of payment of Rs.3,16,314/- on behalf of the complainants and demand letter dated 07.02.2019 was issued.

5.16 The respondent here again repeated the date of completion of the project as 01.09.2026, and stated that the respondent is however making efforts to deliver possession shortly or date may be slightly extended due to *force majeure* on account of Covid-19.

5.17 It is stated by the respondent that representation for refund and to cancel the allotment is a matter of record. It is stated that Tower-9 is still under construction. However, construction is delayed due to non-deposit of timely payments by the allottees.

5.18 It is contended that the complainants are not entitled for any refund and interest thereon and prayed that the complaint be dismissed.

6. The learned Counsel for the complainants filed rejoinder controverting the contents of the reply and reiterated the contents of their complaint.

7. The undersigned heard the arguments of the parties on the stipulated date of hearing.

8. While repeating the contents of complaint, the Counsel for the complainants stated that they were allotted residential Apartment No.9211 having carpet area of 936 square feet, Type E, on 21st Floor in Tower No.9 (Building) at "ATS Golf Meadows Lifestyle", Dera Bassi, SAS Nagar, Mohali, Punjab and out of total sale consideration of Rs.41,63,150/- they have paid Rs.4,16,314/- to the respondent. It is further argued that as per Clause 7.1 of the Buyer Agreement dated 18.02.2019 possession of the residential apartment was to be given by 31.08.2022. The complainants visited the site and noticed that construction has not been started. As such they written letter on 27.10.2020 and also issued legal notice on 02.08.2021 seeking refund, but the respondent did not pay it. Possession till date has not been handed over to them so they wished to withdraw from the project.

9. On the other hand, the learned Counsel for the respondents reiterated the contents of their reply and stated that these may be considered as their arguments in matter under consideration.

10. The undersigned has considered the above submissions of the parties and also gone through the available record of this case.

11. The emphasis of the Counsel for the respondent was upon the completion date of the project granted by this Authority i.e. 01.09.2026. It is argued that as per para 3 of the Form 'B' submitted by the respondents in compliance of Section 4(2)(L)(C) of the Act of 2016, the completion time of the project has been mentioned to be '9 years' and pursuant thereto this Authority vide its Memo No.RERA/2017/13 dated 01.09.2017 granted Registration No.PBRERA-SAS79-PR0007. As such the completion time of the project is 01.09.2026. However, in view of the law settled upto the Hon'ble

Supreme Court e.g. (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** (emphasis supplied). Thus, this argument of the learned Counsel for the respondent has no merit and is accordingly rejected.

12. It is to be noted that perusal of Clause 7.1 revealed that possession was to be handed over on or before 31.08.2022. The complainants stated that respondent failed to hand over the same till today. Thus, the complainants are within their right to seek refund of their deposited amount.

13. Regarding the objection raised by the Counsel for the respondent about Covid-19, it is noted that this Authority has allowed an extension of six months to all the promoters for all the obligations under the Act of 2016 arisen after 15.03.2020. However, in the instant case the obligation to deliver possession was on 31.08.2022 thus the respondent even cannot claim the benefits of the Circular dated 13.05.2020 issued by this Authority. It is the consistent submission of the complainants that despite lapse of sufficient time possession has not been handed over to them so far and they are not interested to stay in the project. There is no definite commitment on behalf of the respondent by what time the possession of the said residential apartment would actually be delivered to them.

14. It is also worth to note that the only relief sought by the complainants is for refund of their deposited amount of Rs.4,16,314/- along with interest as per provisions of Section 18(1) of the Act of 2016

since the respondent failed to adhere to the terms and conditions of the Agreement for sale dated 18.02.2019 and also the delay in delivery of possession of the residential apartment by the respondent to the complainants compelled them to withdraw from the project. Thus, it is established that the complainants are entitled for the refund of their deposited amount as well as interest thereon as per the provisions of Section 18 of the Act of 2016.

15. For the sake of convenience, Section 18(1) of the Act of 2016 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)*

16. After considering all facts, submissions and arguments, the undersigned is of considered view that the plea of complainants is sustainable and accordingly allowed. The respondent is directed to refund the amount of Rs.4,16,314 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 to the complainants from the respective dates of deposits till the date of actual refund.

17. It is also further directed that the refund along with interest thereon should be made by the respondent to the complainants 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 amount along with interest as directed.

18. It may be noteworthy that in case compliance report is not submitted by the respondent after the expiry of above stated period of ninety days and further any failure to comply with or contravention of any order, or direction of this Authority may attract penalty under Section 63 of this Act of 2016.

19. The complainants are also directed to submit report to this Authority that they have received the amount along with interest as per directions issued in this order. Till then the said complainants shall have the charge on the allotted residential apartment No.9211 having carpet area of 936 square feet, Type E, on 21st Floor in Tower No.9 (Building) in the project named "ATS Golf Meadows Lifestyle" situated at village Madhopur, Tehsil Derabassi, District Mohali, Punjab. The complainants are further directed to execute a Cancellation Deed on receipt of full payment of refund and interest thereon from the respondent thereafter.

20. File be consigned to record room after due compliance.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab