

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

Complaint No. GC No.0147 of 2023

Date of Institution : 06.05.2023

Date of Decision:02.01.2025

1. Dr. Deepshikha
2. Dr. Sahil Vikas

Both residents of # 323, First Floor, Sector 59, Phase 4, Sahibzada
Ajit Singh Nagar (Mohali), Punjab, PIN Code 160059

...Complainants

Versus

1. ATS Infrabuild Pvt. Ltd., ATS CASA ESPANA Site Office, Sector 121
Village Barmajra, Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin
Code- 160055
2. Getamber Anand, ATS Corporate Office, ATS Tower, Plot no. 16,
Sector 135, Gautam Buddha Nagar, Uttar Pradesh, Pin Code-
201305
3. Deepak Khanna, site office, ATS CASA Espana, Village Barmajra,
Sector 121, Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin
Code- 160055

....Respondents

Present: Complainants in person
Shri Hardeep Saini, Advocate for Shri J.P.Rana, Advocate for
respondents

ORDER

This complaint in Form 'M' 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
the Rules of 2017) was instituted on 06.05.2023 by the complainants as
individuals against the respondents with reference to Section 18 of the

Act of 2016 seeking possession of the Flat no.1082 in Tower 1 of the project namely "ATS Casa Espana" (Registration Number PBRERA-SAS80-PR0086) being developed by respondents at Sector 121, Village Badmajra, Mohali. The basic selling price of the Flat based on the carpet area mentioned in the Agreement for Sale dated 02.09.2021 is Rs.1,39,79,500/-. However, as per Addendum Agreement dated 15.10.2022 the basic selling price is Rs.1,34,18,500/- plus taxes.

2. The complainants submitted the following in their complaint:-

- 2.1 On 08.08.2021 the complainants booked Flat no.1082 in Tower 1 in the project "ATS Casa Espana" at Sector 121 Village Badmajra, Mohali.
- 2.2 An agreement was signed between the complainants and respondent no.1 on 02.09.2021.
- 2.3 As per this agreement, respondent no.1 assured to hand over possession of the Apartment by 31.12.2022 with grace period of 6 months.
- 2.4 There was no construction in Tower 1 for more than 2 years, since 2019 before Covid the structure completed up to 8th floor only.
- 2.5 On enquiry from respondent no.1, it was the reply that due to insufficient cash flow they were unable to start the construction.
- 2.6 Respondent no.1 has only sold 11 flats out of total inventory of 50 and rest were given to third party (Hira) as part of their financial settlement. Thus, making this tower financially vulnerable as all the 11 buyers would never be

able to complete the construction even if all pay our full dues.

- 2.7 Respondent no.1 sought help from all 11 flat owners in the form of Early Payment Discount (EPD) scheme (which was promised for 8 months) for completing the structure of Tower for which an addendum agreement was also signed with respondent no.1 on 15.10.2022.
- 2.8 As per this addendum agreement, the date of possession of flat was revised to 29.02.2024 with a grace period of 3 months.
- 2.9 After receiving the amount under EPD scheme the construction of Tower 1 was started and they paid EPD for 5 months, but now the construction is again stalled since March-April 2023.
- 2.10 The complainants have obtained loan from State Bank of India (home loan) and paying heavy interest.
- 2.11 Currently the complainants are staying on rent in Phase-4 Mohali and paying 19,200/- per month.
- 2.12 The complainant finds no sign of restarting the construction of Tower-1.
- 2.13 It is apprehended that respondent no.1 will not be able to give possession of our flat even on the revised date as per addendum agreement i.e. 29.02.2024 with a grace period of 3 months.

In view of abovementioned facts and reference to Section 18 of the Act of 2016 complainants prayed that direction be issued

to respondent no.1 to start the construction work and give timely possession of flat at earliest.

3. Upon notice, Shri Hardeep Saini, Advocate appeared for all the respondents and submitted reply dated 10.01.2024 stating therein that

3.1 Respondent company is a renowned real estate company engaged in the business of construction and real estate.

3.2 Respondent company admitted developing of the project namely "ATS Casa Espana" at Sector 121, SAS Nagar Mohali.

3.3 It is admitted that Respondent company entered into an agreement to sell on 02.09.2021 with the complainants with regard to Apartment No.1082, 8th Floor, in Tower 1 in the abovementioned project.

3.4 Respondent company while introducing about the Act of 2016 further stated that the said project is registered with this Authority vide Registration number PBRERA-SAS80-PR0086 and as per Form-B, the completion time of the Project has been declared to be "4 years from the date of the registration" and these four years expired on 13.09.2021.

3.5 Respondent company also stated that since December 2019, the world witnessed the spread of a communicable respiratory disease (Covid-19) and the Ministry of Housing, Government of India, declared the pandemic as a '*force majeure*' and completion dates of the projects have been extended. Extension was also granted to this project and the

date of its completion has been revised from 13.09.2021 to 25.01.2022.

- 3.6 It is further averred that renewal of the license to develop is still pending before Greater Mohali Area Development Authority (GMADA) and further extension of RERA registration is also pending before this Authority. Accordingly, the present complaint seeking possession along with interest for the period of delay is not maintainable.
- 3.7 Respondent company has also mentioned Sections 18, 19, 31, 71, and 72 of the Act of 2016 in support of its case.
- 3.8 This Authority has no jurisdiction to try and decide the instant complainant for the alleged violations mentioned in it.
- 3.9 It is further stressed that the delay in handing over possession of the Apartment relates to violation of a term of the agreement for sale and cannot be termed as a violation of the Act of 2016, Rules and Regulations.
- 3.10 It is also the contention of the Respondent company that there are no provisions in the Act of 2016, Rules or the Regulations to start 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.
- 3.11 A reference has been made to the Addendum Agreement dated 15.10.2022 entered into between the complainants and Respondent company whereby possession of the

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apartment was to be handed over by 29.02.2024 with a grace period of three months. Thus, this complaint is premature. Respondent company further pointed out that if there is any delay in offering possession beyond May 2024 the complainants are entitled for additional discount of 4% p.a. annually making the total discount to 12% p.a. on the complete amount under the EPD Scheme and shall be discounted from the BSP/payable by the Respondent company to the buyer at the time of fit out/actual handing over of possession.

3.12 Respondent company also referred Clause 34 mentioned in the Agreement whereby the complainants have to invoke the 'Dispute Resolution Mechanism'.

3.13 The instant complaint is not maintainable besides being misconceived and erroneous.

On merits, while repeating the above said contents it is added that

3.14 Entering into agreement to sell with the complainants is a matter of record.

3.15 Various amounts are yet to be paid by the complainants.

3.16 Respondent company has relied upon the development agreement entered into between Respondent company and M/s Shivalik Estates Pvt. Ltd. who have 35% of shares and has been allotted inventory of 39 flats in Tower 1 and rest have been allotted to the Respondent company for sale.

3.17 Here again the Respondent company has relied upon addendum agreement dated 15.10.2022 whereby possession of the apartment was to be handed over by

29.02.2024 with a grace period of three months i.e. latest by May 2024 and if there is any further delay the complainants are entitled for additional discount of 4% p.a. annually under the EPD Scheme i.e making the total discount equal to 12% p.a. on the complete amount paid early under EPD Scheme and the said additional discount shall be discounted from the BSP/payable by Respondent company to the buyer at the time of fit-out/actual handing over of possession.

3.18 The complainants have no cause of action to file the instant complaint under the Act of 2016 and the same is not maintainable and it be dismissed with exemplary costs.

4. The complainants filed rejoinder controverting the contents of the reply submitted by the respondents and reiterating the contents of their complaint and added that

4.1 The respondents with dishonest and fraudulent intentions have mentioned the date of possession as 31.12.2022 as per Clause 7 in the agreement dated 02.09.2021 whereas the respondents were granted extension of the registration and completion of the project from 13.09.2021 to 25.01.2022 due to advantage of *force majeure* in lieu of Covid-19.

4.2 The respondents admitted that extension of the registration of the project and renewal of license for development of project both expired but they are continuing the project in gross violation of the norms. So, the complainants should not insist for possession and interest for the period of delay.

- 4.3 The respondents are liable for penalty under Section 60 of the Act of 2016. As per Section 12 of the Act of 2016 the developer is duty bound to provide true and correct information however, they provided false information of the date of completion of the project and are liable for penalty under Section 61 of the Act of 2016.
- 4.4 The respondents have not provided the information about M/s Shivalik Estates Pvt. Ltd. having 35% share in the project as the respondents allotted 39 flats out of total 50 flats to it. This is the root cause of slipping the project as the revenue collected from 11 unit-holders cannot be suffice to complete the construction of the Tower no.1.
- 4.5 The complainants admitted entering into addendum agreement on 15.10.2022 and they were required to pay amounts of 8 monthly installments to pay total 65% of the total cost of the unit under EPD Scheme and making them eligible for the early payment discount of 8%. The complainants paid 5 installments demanded by the respondents. Thereafter no demand was raised by the respondents as such they cannot plead about non-payment of the remaining installments of EPD.
- 4.6 It is further stated that on seizure/freezing of the bank account of the respondents the construction of Tower-1 was stalled.
5. The undersigned heard the arguments of the complainants who appeared in person as well as the learned Counsel for the respondents.

6. The complainants argued that on 08.08.2021 they booked Flat no.1082 in Tower 1 in the project "ATS Casa Espana" at Sector 121 Village Badmajra, Mohali and an agreement was signed between the complainants and respondent no.1 on 02.09.2021. As per clause 7 of this agreement possession of the Apartment was to be handed over by 31.12.2022 with grace period of 6 months. It was further argued by the complainants that Respondent company has sold 11 flats only to the allottees out of total inventory of 50 and rest were given to third party. It was further argued that respondent company sought help from all 11 flat owners under the garb of EPD scheme for completing the structure of Tower. Thereafter, an addendum agreement was also signed with respondent no.1 on 15.10.2022 and as per this addendum agreement, the date of possession of flat was revised to 29.02.2024 with a grace period of 3 months. The construction of Tower 1 was started and the complainants paid EPD for 5 months, but the construction was again stalled since March-April 2023. The complainants have obtained loan from State Bank of India (home loan) and paying interest. It was further submitted by the complainants that currently they are staying on rent and paying Rs.19,200/- per month.

7. On the other hand, the learned Counsel for the respondents reiterated the contents of the reply admitting allotment of Apartment No.1082 in Tower-1, entering into agreement for sale on 02.09.2021 and as per its clause 7 of possession was to be handed over on or before 31.12.2022. The learned Counsel for the respondents also argued about pandemic of Covid-19 and added that due to relaxation the completion date of the project was revised from 13.09.2021 to 25.01.2022. Thereafter further entering into addendum agreement on 15.10.2022

between respondent company and the complainants was admitted whereby possession was to be delivered on or before 29.02.2024 with three months grace period. The learned Counsel for the respondents further argued that renewal of licence of the development of the project land is still pending with GMADA and further extension of RERA Registration is also pending with this Authority. The learned Counsel for the respondents further argued that the present complaint is premature and be dismissed with costs.

8. The undersigned considered the contentions of both the parties and also perused the available record of this case.

9. The relief sought by the complainants is with reference to Section 18 of the Act of 2016 and for issuance of direction to the respondents to start construction and hand over possession of the flat at the earliest.

10. It is the case of the complainants that on 08.08.2021 they booked Flat No.1082 in Tower-1 of the project namely 'ATS Casa Espana' being developed by the respondents at Sector 121, Village Badmajra, Mohali and an agreement for sale was entered into between respondent no.1 and the complainants on 02.09.2021. As per Clause-7 "Possession of the Apartment", respondent no.1 agreed that based on the approved plans and specifications, possession of the apartment will be handed over by 31.12.2022 plus six months grace period.

11. Thereafter an Addendum Agreement was entered into between the complainants being '**first party**' and respondent no.1 being the '**second party**' on 15.10.2022 on the ground that "the Tower/Project completion is delayed way beyond the agreed date between the parties in the Agreement, due to a shortage of funds with ATS Infra Build", with

an Early Payment Discount (EPD) Scheme. The date to hand over the flat in Tower-1 for possession was fixed as 29.02.2024(completion date) with a grace period of 3 months i.e. May 2024. It was further mentioned in the addendum agreement dated 15.10.2022 that the first party would be entitled to discount of 8% p.a. on the said EPD made from the date of payment of each such amount until offer of possession of the apartment. It was also mentioned in the addendum agreement that any delay in offering possession beyond May 2024 by the second party, shall entitle the first party an additional discount of 4% p.a. payable annually i.e making the total discount equal to 12% p.a. on the complete amount paid early under EPD scheme and the said additional discount shall be discounted from the BSP/payable by the ATS Infra Build to the buyer at the time of fit out/actual handing over of possession.

12. It is the case of the complainants that they paid 5 installments under EPD Scheme to the respondents as demanded/ requisitioned by them and thereafter no demand was raised by them. It is also alleged in the rejoinder by the complainants that the bank account of the respondents was seized/freezed by Greater Mohali Area Development Authority (GMADA) resulted into stoppage of construction of Tower-1. It is also the contention of the complainants that they were never informed about M/s Shivalik Estates Pvt. Ltd. having 35% share in the said project and have been allotted 39 flats out of 50 flats and only 11 flats were allotted to the allottees and the revenue generated from these sales appears to be not sufficient to complete the construction of Tower-1. It is also the case of the complainants that despite making payment of five installments as per EPD Scheme, possession of the flat has not been

handed over to them till date. There was no construction since March-April 2023.

13. On the other hand, while admitting the entering into Agreement for Sale on 02.09.2021 whereby possession was to offered on 31.12.2022 with grace period of six months and later on Addendum Agreement on 15.10.2022, whereby possession was to be offered on 29.02.2024 with grace period of three months, it is the contention of the respondents that various amounts are still outstanding from the side of the complainants and payment of alleged amounts was denied by the respondents. However, there was no reply about the construction of Tower-1 for which the complainants paid under the EPD Scheme and promised by the respondents to hand over the possession of the flat by 29.02.2024 with grace period of three months.

14. Regarding the objection raised by the complainants that the respondents have been granted extension due to Covid-19 from 13.09.2021 to 25.01.2022, however the respondents have mentioned the date of handing over possession of the flat by 31.12.2022 in the agreement entered into between the parties on 20.09.2021. As per record of this Authority, the respondent-builder was granted extension upto 31.12.2022 vide this Authority's Endst. No.RERA/Pb.EG(P)/2022/1359 on 03.03.2022 on submission of an application under Section 6 of the Act of 2016 for extension of registration.

15. Regarding the pendency of the application submitted by the respondents for extension in RERA Registration of their project with this Authority, it is noteworthy that no further extension of RERA registration has been granted by this Authority to the respondents till date.

16. It is also worth to mention here that vide order dated 11.01.2024, this Authority directed the respondents to provide details of any other similar/ready vacant flat in their project which can be allotted to the complainants as an alternate as requested by the complainants, however no such detail was placed on file by the respondents. Similarly, vide order dated 25.09.2024, the respondent- promoter assured that they will hand over an alternate 'plot' (it should be read as 'flat' instead of 'plot' as the word 'plot' was typed inadvertently) to the complainants. However, during the course of the arguments on the stipulated date no such assurance was fulfilled by the respondents. The complainants accordingly prayed that the matter may be decided on merits.

17. Further regarding another objection of the respondents that Clause 34 of the Agreement stipulates the mechanism of dispute resolution and any dispute shall be settled amicably through the Adjudicating Officer, appointed under the Act. However, it is noteworthy that this Authority had already held in various orders that presence of such 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 versus Aftab Singh*" (Review petition nos. 2629 and 2630 of 2018). This argument of respondents is accordingly rejected.

18. Regarding the another objection of the respondents that the instant complaint is premature is without any merit. As per agreement for sale dated 02.09.2021 possession was to handed over on 31.12.2022. However, before the lapse of this date of possession, an Addendum Agreement was entered into between the parties on 15.10.2022 wherein the date of possession was mentioned as

29.02.2024 with grace period of 3 months. It is the case of the complainants that under EPD scheme they paid five installments as demanded by the respondents but neither the construction of the Tower-1 was complete nor the respondents demanded further installments under EPD scheme. Even after the execution of addendum and rescheduling of payments in the way of five installments, the respondents failed to fulfil the promise of giving possession by the new dates i.e 27.02.2024.

19. The payments made by the complainants after the addendum technically supersedes the earlier agreed date of possession and also the schedule of payments as it is afresh agreed date and amount.

20. The respondents have not made any further demand and also failed to achieve the committed date of giving possession.

21. Since there was no chance of fulfilling the commitment by the respondents to hand over possession on the date fixed or even there was no whisper from the side of the respondents about the status of the construction of Tower-1, the complainants raised their grievance through this complaint. Even their completion date extended upto 31.12.2022 was expired and no such document was adduced by the respondents regarding further extension of time in completion of the project. The respondents cannot shift their onus on the complainants as they themselves failed to hand over possession on due date. Thus, the complainants were within their right to file the instant complaint which was filed by them on 06.05.2023. Thus, this objection of the respondents is rejected.

22. From the above facts it is established on record that till today possession of apartment no.1082, on 8th Floor, of Tower no.1 in the

project "ATS Casa Espana" situated at village Badmajra, District Mohali, Punjab has not been handed over to the complainants by the respondents which was to be handed over on or before 29.02.2024 with a grace period of three months i.e by May 2024, and this unjustified inordinate delay on the part of respondents is apparent on record.

23. Now the question to be determined is from which date the complainants are entitled for payment of interest for every month of delay till the handing over of the possession.

24. The earlier Agreement for Sale was executed on 02.09.2021 and the date of possession as per its Clause 7 was 31.12.2022 plus six months grace period i.e. June 2023.

25. However, thereafter Addendum Agreement was entered into on 15.10.2022 between the complainants and respondents under EPD Scheme and the date of possession was revised and fixed to 29.02.2024 with grace period of three months i.e. by May 2024. It is relevant to reproduce the following Clause-17 of this Addendum Agreement:

"ATTESTATION:-

17. The parties to this deed have agreed to the contents of this Addendum of their own free will, without any coercion, conniving, or collusion between them. This Addendum is being presented after having concluded that this Addendum is necessary for benefit of the right and interests of parties."

26. Thus, it is noteworthy that the complainants have signed the Addendum Agreement after perusing its terms and conditions and this agreement was in supersession of earlier agreement dated 02.09.2021, which now prevails and held to be superior.

27. It is also worth to reproduce Clauses 4 and 6 of above said Addendum Agreement dated 15.10.2022:-

"4. The Parties agree that only the Advance Amounts so paid by the First Party to the Second Party shall be booked under the EPD Scheme, which would entitle the First party to discount of 8% p.a. on the said early payment made, from the date of payment of each such amount until offer of possession of the apartment."

"6. That any delay in offering possession beyond May 2024 by the Second Party, shall entitle the First Party (in this case the present complainants) an additional discount of 4% p.a. payable annually. i.e making the total discount equal to 12% p.a. on the complete amount paid early under the EPD Scheme and the said additional discount shall be discounted from the BSP/payable by the ATS Inra Build to the Buyer at the time of fit out/ actual handing over of possession. For the avoidance of doubt, it is hereby clarified that the discount is in lieu of the EPD Scheme only and is in addition to any and all delay penalties/mutual settlements (including but not limited to reimbursement of interest payments made by the First Party under a subvention scheme) that the First Party might be entitled to under the Original Agreement.

28. As stated above, as per the documents available on record, the basic selling price of the Flat based on the carpet area mentioned in the Agreement for Sale dated 02.09.2021 was Rs.1,39,79,500/-. However, as per Addendum Agreement dated 15.10.2022 the basic selling price was Rs.1,34,18,500/- plus taxes.

29. As per document dated 03.04.2024 supplied by the complainants showing that they had paid a total sum of Rs.69,78,001/- (Rs.23.52 lakhs by the complainants themselves and Rs.46.26 lakhs disbursed by SBI, from where the complainants availed housing Loan) out of the price

of the apartment based on the carpet area to be Rs.1,39,79,500/- (exclusive of taxes as may be applicable).

30. In view of above discussion, it is held that the complainants are entitled for payment of interest only from 01.06.2024 till the date of actual handing over possession of the flat/apartment.

31. The relevant proviso to Section 18(1) of the Act of 2016 is reproduced hereunder:-

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)

.....

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.

32. Further, in view of the terms and conditions of the Addendum Agreement, the complainants are also further held to be entitled to the discount as per Clauses 4 and 6 of this Addendum Agreement which will be discounted as stipulated in the EPD Scheme at the time of handing over of actual physical possession of the flat/apartment.

33. As a result of the above discussion, this complaint is accordingly allowed and respondents are directed to pay interest under Section 18(1) of the Act 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 on the amount paid by the complainants w.e.f 01.06.2024 till the date of this order and in

the first instance, the arrear of interest would be paid within two months from the date of receipt of this order.

34. The respondents are further directed to pay interest under Section 18(1) of the Act 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 on the amount paid by the complainants from the date of this order till the date of delivery of valid possession of the Apartment No.1082, 08th Floor Tower-01 situated in the project "ATS Casa Espana" situated at village Badmajra District Mohali, Punjab and submit the compliance report.

35. It may be noteworthy that in case compliance report is not submitted by the respondents 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 of 2016.

36. The complainants are also directed to submit report to this Authority that they have received the amount of interest as directed in this order.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab