

**BEFORE Sh. ARUNVIR VASHISTA, Member-II  
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT  
CHANDIGARH**

Complaint No. RERA/ GC No.0235 of 2023

Date of filing: 03.07.2023

Dated of Decision: **28.08.2025**

1. Sanjiv Bari,

2. Aarti Bari

# A-202, PNB Apartments, Sector-4, Dwarka, District  
Central Delhi, Delhi Pin Code 110078

...Complainant

Versus

ATS Estates Pvt. Ltd.

711/92 Deepali, Nehru Place, South Delhi, Delhi Pin Code  
110078,

ATS Golf Meadows, Barwala Road, Dera Bassi, SAS Nagar,  
(Mohali), Punjab

... Respondent

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

Present: Sh. Madhur Panwar, Advocate representative for  
the complainant  
Sh. Hardeep Saini, Advocate, representative for the  
respondent

**ORDER**

The present complaint has been filed by complainants u/s.  
31 of the Real Estate (Regulation & Development) Act, 2016  
(hereinafter referred as the 'RERD Act, 2016') read with Rule 36 of the  
Punjab State Real Estate (Regulation & Development) Rules, 2017  
(hereinafter referred as the 'Rules') before the Real Estate Regulatory  
Authority, Punjab (hereinafter referred as 'Authority') relating to the  
project 'ATS Golf Meadows Lifestyle' at Village Madhopur, Tehsil

Derabassi, Distt. SAS Nagar (Mohali), Punjab against the respondent-promoter ATS Estate Pvt. Ltd.

2. The gist of the complaint, as alleged by the complainant, is that on 15.01.2017, complainants booked a 3BHK residential apartment bearing no.11101 on 10<sup>th</sup> floor in building no.11, situated at ATS Golf Meadows Lifestyle and paid the booking amount of Rs.one lac through cheque. Thereafter, an allotment letter dated 08.03.2017 was issued in favour of the complainants. The basic sale price of the apartment was Rs.60,07,500/-. A buyer's agreement was also executed between respondent and complainants. As per clause 14 of the said buyer's agreement, possession of the apartment was to be handed over to the complainants within 42 months with an additional grace period of 6 months from the date of actual start of construction of a particular Tower/ Building. But till date the project remained incomplete. On 08.03.2017 letter was received from respondent regarding assured monthly rental with respect to the apartment in question. The respondent also raised demand letter dated 01.03.2017 asking for Rs.29,34,419/- which was paid by the complainants. Despite the builder's failure to adhere to the agreed possession timeline, the complainants have consistently pursued the matter through site visits, contacting the builder's office, and reviewing construction progress reports but the builder's response had been inadequate. The complainant's efforts to resolve the issue through emails, letters, and a legal notice have been met with silence from the promoter. As a result, the complainants have decided to withdraw from the project due to the promoter persistent failure to deliver possession as per the



agreement terms. Hence, the present complaint seeking refund of the amount paid.

3. In response to notice, the respondent filed its reply.

**The main averments of respondent in the reply are as follows: -**

- i. It is further the case of the respondent that the project in question was registered with this Authority on 01.09.2017 and as per declaration and affidavit submitted by the respondent and as per the provisions of Section 4(2)(1)(C) of the Act, the completion time of the project, has been declared as nine years i.e. upto 01.09.2026 and as such, the complaint is pre-mature.
- ii. It is further alleged that the provisions of the Act cannot be read *ipso facto* into the already executed contracts between a promoter and an allottee and it is settled law that legislative acts entailing change in substantive rights are made applicable prospectively.
- iii. It is further submitted that the penalty stipulated in the contracts cannot be axiomatic but a person claiming such amount or penalty must prove loss or damages suffered by him.
- iv. It is further alleged that the jurisdiction of this Authority could not have been invoked in this case in view of the arbitration clause 35 of the agreement and dispute resolution mechanism settled between the parties was to be invoked. As such the complaint under the Act is not maintainable.
- v. It is admitted that the complainant booked apartment bearing no.11101 in the project in question for a total sale consideration of Rs.64,61,001/- but dispute the total amount paid. It was contended that

the complainants had only paid Rs.31,08,882/- and an amount of Rs.33,52,119/- was still outstanding against them.

Respondent further cites Section 19(4) of RERA, stating a refund is only applicable if they fail to deliver possession as per the declared timeline. It claims the declared completion time (from project registration) is 9 years, so no cause for action exists yet.

4. The violations and contraventions contained in the complaint were given to the representative of the respondent to which they denied and did not plead guilty. The complaint was proceeded for further inquiry.

5. Complainants filed their rejoinder controverting the allegations of the written reply filed by respondent and reiterating the averments of the complaint.

6. The representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarised above. I have duly considered the documents filed and submissions of the parties i.e., complainant and respondent.

7. It is seen that all the contentions raised in the respondent's reply, as noted above are the questions that have already been settled by Hon'ble Supreme Court in its various decisions. The debate about retrospective effect of the Act has been settled in "***M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. and others (Civil appeal nos. 645-6749 of 2021)***". Further, in "***Emaar MGF Land Vs. Aftab Singh***" (Civil Appeal No. 23512-23513 of 2017), it has



been held that the presence of an arbitration clause in the agreement between the parties does not exclude the jurisdiction of this Authority.

8. Next in "**Imperia Structures Ltd. and other Vs. Anil Patni and others**" (**Civil Appeal No. 3581-3590 of 2020**), it has been held 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 registration of the project is valid.

9. Finally, clauses in an agreement which cast a heavy burden on the allottee in case of delay in making payment as compared to the burden cast on the promoter in case of delay in delivering possession have been held to be invalid in the case of "**Pioneer Urban Land & Infrastructure Ltd. Vs Govind Raghavan**" (**Civil Appeal No. 12238 of 2018**). In this case, the complainants were to pay interest @ 18% per annum for any delay in making payment, while the respondent was to pay only Rs.5/- per sq. foot per month of delay. Such terms and conditions in an agreement are clearly one-sided, and hence invalid. Therefore, any delay in delivery of possession has to be compensated by payment of Interest at the prescribed rate. Thus, none of the contentions raised on behalf of the respondent are sustainable.

10. Respondent has failed to make a valid offer of possession and has also failed to obtain Occupancy Certificate/Completion Certificate. Hon'ble Supreme Court of India in its judgment in **Imperia Structure Ltd. Vs. Anil Patni and Anr. (supra)** in Para 23 of the judgment has held as under: -

“23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.”

11. Further, Hon'ble Supreme Court of India, in Para 77, of its judgment in **M/s. Newtech Developers Pvt. Ltd. Vs. State of U.P. and Ors. etc. (supra)**. has reiterated the law declared by the court in **Imperia Structures Ltd.(supra)**. The same is reproduced below: -

“77. ....The submission has no foundation for the reason that the legislative intention and



mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if the promoter is unable to handover possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promotor wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the regulatory authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act..."

12. As regards contention of the respondent that complainants did not make full payment, Hon'ble Supreme Court in **M/s. Newtech Developers Pvt. Ltd. Vs. State of U.P. and Ors. etc.** (*supra*) in Para 80 has held as follows: -

"80. The further submission made by learned counsel for the appellants that if the allottee has defaulted the terms of the agreement and still refund is claimed which can be possible, to be determined by the adjudicating officer. The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making instalments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and proviso to sub-section 5 of

*Section 11 enables the allottee to approach the regulatory authority to question the termination or cancellation of the agreement by the promotor and thus, the interest of the promoter is equally safeguarded."*

13. The respondent had the option to initiate the process for cancellation of the allotment, in case of default, by the complainants. However, the same was not done and promoter itself failed to offer possession, within the agreed upon/extended period, in terms of Agreement for Sale. Hence, he is liable for refund of the entire amount paid by the complainants, alongwith prescribed rate of interest.

14. As per Clause 14 of the Agreement for Sale, the possession of the unit was to be given within 42 months and further a grace period of 6 months from the date of actual start of the construction of a particular tower/ building in which the registration for allotment was made. The agreement was entered on 08.03.2017 and the possession should have been given by 8<sup>th</sup> March, 2021 as per the agreement, if construction could have started on the same date. This clause of agreement is not as per the approved "Form Q" of the "Agreement for Sale" as prescribed in The Punjab State Real Estate (Regulation and Development) Rules, 2017. Hence, the clause is not maintainable as the complainants are seeking refund due to the failure of the promoter to construct the unit of the complainants and they are seeking refund of the money deposited.

15. As per provisions of Section 18 of RERD Act, the complainants are entitled to claim refund alongwith interest as per their



choice in case of non-completion of the project on due date. Section 18 reads as under: -

*"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*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.*

16. In view of the above, the complaint is **Partly Allowed** and complainants are held entitled to refund of their money alongwith interest applicable as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017.

17. The complainants have already received Rs.3,68,000/- as assured return. The said assured returns will be deducted out of the interest payable by the promoter to complainants.

18. The promoter is also directed not to sell, allot, book the unit which was allocated to the complainants, till the payment is made to the complainants. The complainants will have their continuous lien over the said unit till the refund alongwith interest is paid by the promoter to the complainants as determined in this order. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.

**Chandigarh:**  
**Dated: 28.08.2025**



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