

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

Complaint No.0359 of 2023
Date of Institution : 03.10.2023
Date of Decision: **11.09.2024**

1. Rana Yudhvair Singh
2. Mehtaab Kaur

Both residents of One Commandant Residence. 50th BN ITB Police Residential Complex, Sector 26, Panchkula, Haryana, Pin Code 134116

....Complainants

Versus

1. M/s ATS Estates Pvt. Ltd., 711/92, Deepali, Nehru Palace, New Delhi, Pin Code 110019
2. State Bank of India. Plot No.1, and 2, City Centre, Sector 5, Panchkula, Haryana, Pin Code 134109

....Respondents

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation and Development) Act, 2016, read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Registration Number: PBRERA-SAS79-PR0007)

Present: Shri Arun Sharma, Advocate for the complainants
Shri J.P.Rana and Shri Hardeep Saini, Advocates for respondent no.1
Shri Arun Kumar Goel, Advocate for respondent no.2

ORDER

Through the instant complaint, complainants seek refund of the amount of Rs.17,79,420/- along with interest thereon.

2. In brief, complainants in the month of March 2016 vide application No.197 dated 15.02.2017 booked a residential Apartment as per brochure (**Annexure C-1**). Vide provisional allotment letter dated 28.02.2017, complainants were allotted Apartment No.10153, 15th Floor, Tower/Building No.10, Type 'C' in the project "ATS Golf Meadows Lifestyle" being developed by respondent no.1 at Village Madhopur, Tehsil Derabassi, District Mohali, Punjab. Thereafter an agreement was executed on 28.02.2017 (**Annexure C-3**) and as per

its Clause 14 the date of the delivery of apartment was fixed 48 months (42 months + 6 months' grace period) from the date of start of construction. The total sale consideration of the apartment is Rs.52,75,000/-. Complainants availed loan from respondent no.2 and a Tripartite agreement was entered into between complainants, respondent no.1 and respondent no.2 (**Annexure C-4**). Till date possession has not been delivered by respondent no.1 to complainants. As such complainants are not interested to stay in the project. Hence, this complaint seeking relief of refund of Rs.17,79,420/- along with interest thereon.

3. Upon notice, Shri Hardeep Saini, Advocate appeared and filed Power of Attorney of himself along with of Shri JP.Rana Advocate for respondent no.1. Thereafter reply dated 20.12.2023 was filed by respondent no.1.

4. In the reply filed on behalf of respondent no.1, it is admitted by these respondents that they are developing the project namely "ATS GOLF MEADOWS LIFE STYLE" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab. Respondent no.1 admitted entering into agreement to sell on 28.02.2016 for Apartment No.10153, on 15th floor, Tower no.10, in its project "ATS Golf Meadows Lifestyle". Further, respondent no.1 while introducing about the Act of 2016 further stated that the said project is registered with this Authority vide Registration number PBRERA-SAS79-PR0007 and as per Form-B filed with Authority as affidavit-cum-declaration dated 19.07.2017, the completion time of the Project consisting of 15 Towers, has been declared to be "9 years" i.e by 01.09.2026. Respondent no.1 has also mentioned Sections 18, 19, 31, 71, and 72 of the Act of 2016 for the sake of decision, the same are not being reproduced here.

5. Apart from above submissions, the learned Counsel for the respondent no.1 has also taken preliminary objections that no cause of action arisen in favour of the complainant. Respondent no.1 referred Section 4 of the Act and stated that as per Form-B (supra), 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. It is also submitted that this Authority has no jurisdiction to try and entertain this complaint. It is also alleged that the provisions of the Act of 2016 which are beneficial to the allottee as well as to the promoter should also be read into the existing agreements. He also referred to Section 19(4) of the Act of 2016 whereby the complainant shall be entitled 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 no.1 also reproduced Section 19(3) of the Act of 2016 and contended that under this provision the complaint seeking possession due to delay in delivery of possession would only arise after 01.09.2026. Thus, no cause of action arisen in favour of the complainant to file the instant complaint. 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, Rules and Regulations. There is no provision in the Act, 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. Respondent no.1 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 the Act of 2016 and Rules and Regulations. The respondent no.1 has also referred Clause 35 of the agreement whereby any dispute between the parties shall be settled

amicably by mutual discussion, failing which the same shall be settled through Arbitration and the complainant failed to invoke this Clause. The respondent no.1 further referred Clause 37 and contended that the courts at Noida, Uttar Pradesh have the exclusive right and jurisdiction to hear the dispute and decide the matter.

6. On merits, it is averred that respondent no.1 has paid a sum of Rs.2,99,000/- qua assured return to complainants which has been concealed by them in their complaint. Further, a sum of Rs.4,02,719/- is still outstanding and handing over possession is subject to fulfilment of various terms and conditions of agreement. Respondent no.1 is making earnest effort to deliver possession shortly or may be slightly extended due to the pandemic of Covid-19. It is prayed that complaint be dismissed with costs.

7. Respondent no.2 bank also filed reply dated 09.11.2023 admitting disbursing of loan amount of Rs.39,67,000/- vide loan account No.00000036619224093 and presently a sum of Rs.16,82,051.97 as on 08.11.2023 is outstanding against complainants. Complainants are under legal obligations to make the payment of availed loan as per terms and conditions of tripartite agreement. It is the prayer of respondent no.2 that if refund is being ordered by this Authority, the amount so awarded be paid to respondent no.2/bank in order to appropriate it in the loan account of complainants having first charge to recover its outstanding.

8. Complainants submitted rejoinder reiterating the content of their complaint and controverting the contents of reply filed on behalf of respondent no.1.

9. The undersigned heard the parties on the stipulated date of hearing.

10. While reiterating the contents of their complaint, complainants argued that they were allotted Apartment No.10153, on 15th floor, Tower no.10, for a total sale consideration of Rs.52,75,000/-. As per Clause 14 of the agreement dated 28.02.2016 possession was to be delivered within 48 months from the date of start of construction of particular tower/building. It is argued that possession of the apartment has not been delivered and prayed for refund of their amount along with interest thereon.

11. On the other hand, Counsel for the respondent no.1 at the time of arguments, admitted entering into agreement to sell for Apartment No.10153, on 15th floor, Tower no.10, on 28.02.2016. He further argued that as per registration letter dated 01.09.2017, completion date of completion of the project is 01.09.2026. He also drew attention of this Bench towards clause that if any dispute arisen then the matter is to be referred to the Sole Arbitrator under the provisions of Arbitration and Conciliation Act, 1996. He has also argued that respondent no.1 has paid a sum of Rs.2,99,000/- qua 'assured return' to complainants and also a sum of Rs.4,02,719/- is still outstanding against them. Respondent no.1 is making endeavour to deliver possession shortly. However, he stressed that in case this Bench is considering to refund the amount deposited by complainants, then a sum of Rs.2,99,000/- already paid by respondent no.1 to complainants towards 'assured return' be set off from the due interest payable by respondent no.1 to complainants. It is prayed by respondent no.1 that complaint be dismissed.

12. The undersigned considered the rival contentions of the parties and also perused the available record.

13. Perusal of file revealed that following interim order was passed by this Bench on 04.09.2025 which is reproduced:

"04.09.2025

*Present: Shri Arun Sharma, Advocate for the complainant
Shri Hardeep Saini, Advocate for the respondent*

Both the parties addressed the arguments.

It is agreed by both Id. Counsels after verifying the receipt and payment that the total amount paid by the complainant comes to Rs.25,36,469/-. A sum of Rs.2,90,000/- has been paid by the respondent as part of assured return. Therefore, the balance amount comes to Rs.22,46,469/-

The matter is reserved for order. Detailed order will be passed separately.

*Sd/-
(Binod Kumar Singh)
Member, RERA, Punjab"*

14. From the facts and submissions discussed above, it is evident that respondent no.1 failed to keep their promise to deliver possession of the unit as per the agreement entered. The respondent no.1 admittedly, has not made any offer of possession and even no Occupancy Certificate has been obtained. In these circumstances, the complainant was left with no option but to opt out of the project. The provisions of Section 18(1) of the Act clearly provide for a refund of the amount paid by an allottee if the promoter is unable to adhere to the terms of the agreement to sell. As such, the complainant is entitled to the refund of amount paid, along with interest under Section 18(1) of the Act read with Rule 16 of the Rules, 2017

15. In view of above admission of both the parties, complainants are entitled for refund of Rs.22,46,469/- and interest thereon as per the mandate of Section 18 of the Act of 2016 which is reproduced hereunder:

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

16. On the other hand, counsel for complainants has placed on file account statement for the period from 01.04.2024 to 31.03.2025 showing outstanding of Rs.16,55,088.97 issued by State Bank of India/ respondent no.2 for the account No. No.00000036619224093 belonging to Mr. Rana Yudhvir Singh and Mrs.Mehtaab Kaur, complainants herein.


17. As a result of the above facts and discussion this complaint is allowed and respondent no.1 is directed

17.1 to refund the amount of Rs.22,46,469/- along with interest at the rate of 10.85% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.85% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the respective dates of payments till realization.

17.2 However, it is made clear that the first charge of the refund amount shall be of respondent no.2/State Bank of India

from whom complainants availed loan vide Loan Account No.00000036619224093.

- 17.3 Respondent no.1 is further directed to refund the amount to respondent no.2 within the statutory time i.e ninety days stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 and balance refund, if any, to complainants.
18. File be consigned after due compliance.



(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab