



Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh – 160018

Before the Bench of Sh. Rakesh Kumar Goyal, Chairman.

1. **Complaint No.** :- GC No. 0394/2023
2. **Name & Address of the complainant (s)/ Allottee** :-
 1. Sh.Nimrit Preet Singh,
 2. Ms.Simran Chopra,

(Both r/o Village Damulian, PO Nadala
Tehsil Bholath, Kapurthala, Punjab – 144624)
3. **Name & Address of the respondent (s)/ Promoter** :-
 1. ATS Estates Pvt. Ltd.
 2. ATS Infrastructure Pvt. Ltd.
 3. Dynamic Colonisers Pvt. Ltd.

(All 1 to 3 are at 711/92, Deepali, Nehru Place,
New Delhi – 110019)
4. **Date of filing of complaint** :- 29.10.2023
5. **Name of the Project** :- ATS Golf Meadows Lifestyle
6. **RERA Registration No.** :- PBRERA-SAS79-PR0007
7. **Name of Counsel for the complainant, if any.** :- Sh. Ripu Daman Singh, Advocate
8. **Name of Counsel for the respondent, if any.** :- Sh. Hardeep Saini, Advocate for respondents
9. **Section and Rules under which order is passed** :- Section 31 of the RERD Act, 2016 r.w. Rule 36 of Pb. State RERD Rules, 2017.
10. **Date of Order** :- 28.01.2025

**Order u/s. 31 of Real Estate (Regulation & Development) Act, 2016
read with Rule 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017.**

The present complaint dated 29.10.2023 has been filed by Ms.Nimrit Preet Singh & Ms. Simran Chopra (hereinafter referred as the '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 (project area 84208.0000 sq. meters) against the respondent-promoter ATS Estate Pvt. Ltd.

2. The brief gist of the complaint is that in April 2015, the complainants jointly booked a residential apartment (Unit No. 14036, 1160 sq. ft.) in the ATS Golf Meadows Lifestyle-2 project at Derabassi, Mohali, Punjab, developed by the respondents. They initially paid ₹3,00,000 via cheque on 01.09.2015 and later transferred ₹3,28,127 through RTGS on 24.08.2016. Due to an anticipated delay in possession, the respondents-promoter requested a transfer to another unit (No. 9022, Type-D, Tower-9), to which the complainants consented by signing a cancellation and transfer letter and executing an affidavit-cum-indemnity bond. The new allotment was confirmed via a provisional allotment letter on 08.06.2017, with a total sale consideration of ₹46,40,000, including ₹44,99,000 as the basic sale price, ₹1,00,000 for power backup, and ₹50,000 for IFMS. A buyer agreement executed on the same date outlined that possession was to be delivered within



42 months, plus a six-month grace period from the commencement of construction, which started in February 2017, making the due possession date 28.02.2021. The respondents also promised an assured monthly rental of ₹11,000 for 36 months upon payment of 50% of the BSP, which the complainants fulfilled by 27.09.2017 after paying ₹22,72,534 (including a ₹15,68,726 payment via HDFC bank loan). However, the respondents neither paid the assured rental nor completed Tower-9, thereby failing to demand the next installment of ₹13,47,000 due upon structural completion. Despite timely payments by the complainants and full repayment of their HDFC loan (NOC dated 17.12.2020), the project remains incomplete, with no possession delivered and agreed amenities not provided. With the possession deadline long overdue and the project stalled, the complainants seek to withdraw from the project and hence the present complaint for refund with interest.

3. In response to notice, the respondents have filed their replies (dated 28.28.08.2024).

➤ **The preliminary objections taken by the respondents are as under:-**

- 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 31.08.2026 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 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.

On merits it had respondents submitted as under:-

- a. It is admitted that the Complainants had initially booked Apartment No. 14036, which was later transferred to Apartment No. 9022 (2nd Floor, Tower No. 9) upon their request through an Affidavit-cum-Indemnity Bond. The Respondent does not admit the payment details as claimed by the Complainants and puts them to strict proof regarding payments made.



- b. Additionally, the Complainants had taken a home loan from HDFC Bank, which is a matter of record. Notably, the Complainants were delayed in making a payment of ₹70,593, as per the Buyer's Agreement, and the handing over of possession was subject to compliance with all terms & conditions, including timely payments.
- c. The construction of the project was impacted by multiple allottees failing to make payments on time, including the Complainants. Despite this, the Company is making earnest efforts to deliver possession at the earliest. Furthermore, COVID-19 was recognized as a force majeure condition.
- d. Importantly, under Section 4(2)(1)(C) of RERA, 2016, the entitlement to claim a refund along with interest for delay arises only if possession is not handed over within the declared project completion timeline. Since the declared completion date is 01.09.2026, the present complaint is premature as the stipulated timeframe has not yet lapsed, and no cause of action has arisen.
- e. Moreover, the contract between the parties is a "best-effort" obligation rather than an absolute commitment to a fixed possession date, and its enforceability is subject to compliance with project regulations and timely payments by allottees. Given these facts, the present complaint appears to be an abuse of the legal process, as it seeks a refund before the due completion date.



Therefore, the Respondent respectfully prays for the outright dismissal of the complaint, as it lacks legal merit.

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

5. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint.

6. That 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 written & oral submissions of the parties i.e., complainant and respondents.

7. During the arguments, Sh. Ripu Daman Singh, Ld. Counsel for the complainants submitted that the complainants booked an apartment in the ATS Golf Meadows Lifestyle-2 project in April 2015 and, due to delays in possession, were later transferred to another unit (Apartment No. 9022 in Tower-9). The Buyer's Agreement stipulated that possession should be delivered by 28.02.2021, but the respondents failed to complete the construction of Tower-9, and no possession was delivered by the due date. The complainants assert that the project has stalled and remains incomplete, with the promised amenities and rental payments not provided. Despite timely payments and

full repayment of their HDFC loan, the respondents have failed to fulfill the terms of the contract, which entitles the complainants to a refund with interest as per the provisions of the RERA Act, as the possession deadline has passed and the project has not been completed.

8. In response, Sh. Hardeep Saini, Ld. Counsel for the respondent argued that the complaint is premature, as the declared completion date for the project is 01.09.2026, and the complainants' demand for a refund before this date is not supported by law. They claim that any delay in construction was partly due to the complainants' delayed payment of ₹70,593, which they contend had an impact on the progress of the project. Additionally, they invoke COVID-19 as a force majeure condition, suggesting that the pandemic caused unavoidable delays. The respondents emphasize that the contract was a best-effort commitment and that possession was not guaranteed on a fixed date but rather subject to various factors, including the timely payments of all allottees. They argue that the complainants' demand for a refund before the official completion date constitutes an abuse of legal process and request that the complaint be dismissed as premature and lacking legal merit. The respondents' primary defense rests on the argument that the stipulated completion date has not yet passed, and the complainants should not be entitled to a refund before the timeline lapses.

9. It is hereby noted that the preliminary submission/contentions raised in the respondent's reply, as noted in para 3 above, have already been settled by various decisions of the Supreme Court and had already been discussed, in detail, in the case of **Lt. Col. Rahul Jain Vs. ATS Estates Pvt. Ltd. vide AdC No. 1482/2019BFTR-AUTH0062/2022** by this Bench.

10. 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 is made. The agreement was entered on 08.06.2017 and the possession should be given by 07.06.2021 (including six months of grace period) as per the agreement, if construction could have started on the same date. The date of possession is as per Agreement for Sell and project completion date mentioned in the registered letter this Authority is not binding on the allottee. There is a big time gap between completion of project and promised date of possession by the promoter. Thereafter, for the purposes of all Rights & claim under Real Estate (Regulation & Development) Act, 2016 the date of possession mentioned in the "Agreement for Sell" is binding on the promoter which was 07.06.2021 (including grace period). Hence, the clause is not maintainable as the complainant is seeking refund due to the failure of the promoter to construct the unit of the complainant and it is seeking refund of the



money deposited. The complainant as submitted has made the following payment to the promoter:-

Sr. No.	Payment made/ Received on	Cash/Cheque	Amounting to Rs.
1	01.09.2015	Transfer	3,00,000/-
2	24.08.2016	Transfer	3,28,127/-
3	27.02.2017	NEFT	75,681/-
4	27.09.2017	Cheque	15,68,726/-
TOTAL			22,72,534/-

Loan amount taken from the bank had already been repaid by the complainant, to which respondent has not disputed during the hearing.

11. As per record and arguments address by both the Counsels for the complainants and respondents, there is no dispute qua the allotment, amount received by the respondent, stipulation of offer of possession etc. It is clear that respondent has failed to make a valid offer of possession on time and has also failed to obtain Occupancy Certificate/Completion Certificate, even till the time of arguments/filing of written submissions. 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."



12.

Further, Hon'ble Supreme Court of India, in Para 77, of its judgment in **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others in Civil Appeal Nos. 6745-6749 of 2021.** 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..."

13. As regards contention of the Respondent that complainants did not make full payment, Hon'ble Supreme Court in his judgment in **M/s. Newtech Developers Pvt. Ltd. (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.”

14. The respondent had the option to initiate the process for cancellation of the allotment, in case a 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 complainant, alongwith prescribed rate of interest.

15. Since the construction has been delayed inordinately; and the project in question is a registered project. It is more than 3 ½ years of booking of flat by complainant. As per provisions of Section 18 the complainant is entitled to claim refund alongwith interest as per its choice in case of non-completion on due date. It 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 complainant is entitled to refund of its money alongwith interest applicable @ 11.10% (i.e. 9.10% SBI's Highest MCLR Rate applicable as on 31.12.2024 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The period for payment of interest will be considered from the next month in which payment was effected by the allottee to the previous month of the date in which payment has been effected by the

promoter. Therefore, the calculation of refunds and interest upto 31.12.2024 is calculated as follows:-

Sr. No.	Payment made on	Cash/ Cheque	Interest payable from	Principal Amount paid	Interest calculated till	Rate Of Interest	Delay in months	Interest payable till 31.12.2024
1	01.09.2015	Transfer	01.09.2015	3,00,000/-	31.12.2024	@ 11.10% (i.e. 9.10% SBI's Highest MCLR Rate applicable as on 30.11.2024 + 2%)	112 months	3,10,800/-
2	24.08.2016	Transfer	01.09.2016	3,28,127/-	31.12.2024		100 months	3,03,517/-
3	27.02.2017	NEFT	01.03.2017	75,681/-	31.12.2024		94 months	65,805/-
4	27.09.2017	Cheque	01.10.2017	15,68,726/-	31.12.2024		87 months	12,62,432/-
TOTAL				22,72,534/-				19,42,554/-

17. The Hon'ble Supreme Court, in its judgment in the matter of **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Others (Civil Appeal Nos. 6745-6749 of 2021)**, has upheld that the refund to be granted u/s. 18 read with Section 40(1) of the Real Estate (Regulation & Development) Act, 2016 is to be recovered as Land Revenue alongwith interest and/or penalty and/or compensation.

18 In view of the aforesaid legal provisions and judicial pronouncement, it is hereby directed that the refund amount along with the accrued interest shall be recovered as Land Revenue. Accordingly, the Secretary is instructed to issue the necessary Recovery Certificate and send it after 90 days as per Rule 17 of the Punjab Real Estate (Regulation & Development) Rules, 2016 to the relevant Competent Authorities under the Land Revenue Act, 1887 for due collection and enforcement in accordance with law. The concerned authorities are further directed to take expeditious steps for the recovery of the amount as per the prescribed procedure under the Land Revenue Act, ensuring compliance with all legal requirements and due process.

19. Further the principal amount is determined at Rs.22,72,534/- and the rate of interest has been applied @ 11.10% (i.e. SBI's Highest MCLR Rate applicable as on 31.12.2024 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. Hence, the promoter is liable to pay an amount of Rs.21,021/- per month as interest till the whole interest amount of Rs.19,42,554/- and any amount due as interest of Rs.21,021/- per month after 31.12.2024 is due and pending. Any amount paid by the promoter will be considered as payment against the interest whatever is due and will become due. After payment of whole of interest only then the payment will be considered against principal and accordingly the principal will be reduced and interest will be charged on the balance amount till the amount is fully paid. Even subsequent payment if any will be first considered towards interest payment, if any becomes due on the unpaid principle amount.

20. Further, the promoter is directed not to sell, allot, book the unit which was allocated to the complainants i.e. Apartment (Unit No. 14036, 1160 sq. ft.) till all the payment payable to Sh. Nirmal Preet Singh including of Rs.42,15,088/- and subsequent interest amount if any becomes dues is fully paid to the complainant. The complainant will have its continuous lien over the said unit till the refund alongwith interest is not paid by the promoter to the complainant as determined in this order and/or mention in the Decree



Certificate. However, the promoter is free to sell the Apartment (Unit No. 14036, 1160 sq. ft.) after duly obtaining the receipt of the due payment from complainant as per this order.


21. The complainant & the respondent are directed to inform the Secretary of this Authority regarding any payment received or paid respectively so as to take the same in to account. The amount of Rs.42,15,088/- has become payable by the respondent to the complainant within 90 days from the date of receipt of this order by the promoter as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 read with Rules 17 of the Punjab Real Estate (Regulation & Development) Rules, 2017 as determined vide this order u/s. 31 of the Real Estate (Regulation & Development) Act, 2016. The Secretary of this Authority is hereby directed to issue a Recovery Certificate immediately and send to the Competent Authority as mentioned in the Punjab Land Revenue Act, 1887 after 90 days of the issuance of this Order to be recovered as arrears of land revenue.

22. No other relief is made out.

23. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.


Chandigarh
Dated: 28.01.2025




(Rakesh Kumar Goyal),
Chairman,
RERA, Punjab.

A copy of the above order may be sent by the Registry of this Authority to the followings:-

1. Sh.Nimrit Preet Singh,
2. Ms.Simran Chopra,
(Both Sr. No. 1 & 2 r/o Village Damulian, PO Nadala Tehsil Bholath, Kapurthala, Punjab – 144624)
3. ATS Estates Pvt. Ltd.
4. ATS Infrastructure Pvt. Ltd.
5. Dynamic Colonisers Pvt. Ltd.
(Sr. No. 3 to 5 at 711/92, Deepali, Nehru Place, New Delhi – 110019)
6. The Complaint File.
7. The Master File.


(Sawan Kumar),
P.A. to Chairman,
RERA, Punjab.