

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

Complaint No. GC No.0402 of 2023
Date of Institution : 31.10.2023
Date of Decision: 28.01.2025

1. Koushik Bandopadhyay
2. Tanuka Bandopadhyay

Both residents of CEO, 25 ED, AF Air Force Station, Devlali
(South), Maharashtra, Nashik, PIN Code 422501

...Complainants

Versus

1. ATS Estate Pvt. Ltd., 711/92, Deepali, Nehru Place, New Delhi-110019
2. ATS Infrastructure Ltd. 711/92, Deepali, Nehru Place, New Delhi-110019
3. Dynamic Colonizers Pvt. Ltd., 711/92, Deepali, Nehru Place, New Delhi-110019
4. HDFC Ltd (now HDFC Bank Limited), SCO 153-55, Sector 8-C, Madhya Marg, Chandigarh 160008

....Respondents

Present: Shri Vipin Kumar, Advocate for complainants
Shri Hardeep Singh, Advocate for Shri J.P.Rana, Advocate
for respondents no.1 to 3
Shri Himanshu Raj, Advocate for respondent no.4

ORDER

This complaint was instituted on 31.10.2023 in Form 'M' 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) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 against the respondents seeking refund of the whole amount deposited by the complainants along with interest with respondents no.1 to 3 for purchase of Apartment bearing No.10044, on 4th Floor, of Tower No. 10 having Super Area of approximately 1900 Sq.ft in their project "ATS Golf

Meadows Lifestyle" being developed at Village Madhopur, Derabassi, Mohali, Punjab.

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 In the month of February, 2016, the complainants booked an apartment bearing no.10044, on 4th Floor, of Tower No. 10 having Super Area of approximately 1900 Sq.ft with the respondent at "ATS Golf Meadows Lifestyle" situated at village Madhopur, Derabassi, Mohali, Punjab at the basic sale price of Rs.49,90,000/-.
- 3.2 It was informed to the complainants that the said project has all approvals and sanctions from the competent authorities in the names of respondents no. 2 and 3 and the development being carried out is in full swing.
- 3.3 The apartment shall be ready for the possession within 3.5 years.
- 3.4 Complainants paid Rs.5,00,000/- and Rs.2,77,562/- by way of cheques dated 19.03.2016 and 19.05.2016 respectively.
- 3.5 Allotment letter was issued on 23.06.2016 by the respondents and also entered into Buyer's Agreement on the same date.
- 3.6 As per the agreement possession of the apartment would be handed over within 42 months i.e. on or before 23.12.2019.
- 3.7 On 23.06.2016, the complainants entered into Tripartite Agreement with respondent no.1 and respondent no.4/HDFC Bank Limited for availing housing loan.
- 3.8 Respondent no.4 released Rs.17,46,500/- to respondent no. 1. Hence a total amount of Rs.25,24,062/- had been paid to respondent no. 1.

- 3.9 Later on, the complainants asked the respondents that why the development was going on at a very slow speed and it was almost stopped.
- 3.10 It is contended that the respondents assured the complainants that the possession would be handed over in January, 2020.
- 3.11 It is submitted by the complainants that they visited the site in January, 2020 and found that no work was going on and there was no possibility of handing over possession in near future despite receiving about 50% of the total cost amounts. Even today (date of filing of the complaint) the completion of project is too far from site.
- 3.12 The complainants have lost confidence in the project of the respondents and hence wished to withdraw from it.
- 3.13 It is alleged that respondents have violated Section 18 of the Act of 2016 and the present complaint is being filed under Section 31 of the Act of 2016.
4. It is the prayer of the complainants that the respondents no.1 to 3 be directed to refund the whole amount to the complainants along with interest. In support of their case the complainants have attached payment receipts, allotment letter, buyer agreement, permission to mortgage, tripartite agreement, and no due certificate with their complaint as Annexures C-1 to C-6 respectively.
5. Notice was issued to all the respondents on 23.11.2023. Shri J.P.Rana, Advocate appeared for respondents no.1 to 3. Reply dated 28.08.2024 was submitted by these respondents. Respondent no.4/HDFC Bank Limited filed reply vide this Authority's Diary No.1295 on 21.02.2024.

6. It is noted that no rejoinder has been filed by the complainants.
7. In the reply submitted on behalf of the respondents no.1 to 3, following points have been averred that:

- 7.1 They are developing the project namely "ATS GOLF MEADOWS LIFE STYLE" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab.
- 7.2 It is further admitted that complainants entered into Buyer Agreement with respondents in respect of Apartment bearing No.10044, on 4th floor of Tower No 10, in the above said residential project "ATS GOLF MEADOWS LIFE STYLE" on 23.06.2016.
- 7.3 The respondents 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, the completion time of the Project consisting of 15 Towers, had been declared to be "9 years" i.e by 01.09.2026.
- 7.4 The respondents have also relied upon Sections 18, 19, 31, 71 and 72 of the Act of 2016 for the sake of decision.

Apart from above submissions, the learned Counsel for the respondents no.1 to 3 has also taken preliminary objections to the effect that

- 7.5 No cause of action arisen in favour of the complainants. Respondents referred Section 4 of the Act of 2016 and as

per Form-B, the period of 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 contended that this Authority has no jurisdiction to entertain and try the complaint.

7.6 The respondents submitted that said agreement of sale was entered upon on 08.06.2017 and as per its Clause 14 of possession of the plot was to be handed over 'by 42 Months plus 6 months of grace period from start of construction', i.e. within a total period of 48 months from the date of start of construction which comes down to February 2021. Offer of possession could not be made till date due to spread of Novel Coronavirus-19 and implementation of nationwide lockdown in the entire country affecting the construction activities at large. Vide notification/circular dated 28.10.2020, this Authority granted 6 month's extension for completion of projects to the Real Estates Companies.

7.7 it is alleged that this Authority has got no jurisdiction to try and decide the instant complaint for the alleged violations stated in the complaint.

7.8 It is alleged that the provisions of the Act which are beneficial to the allottees as well as to the promoters should also be read into the existing agreements. He also referred to Section 19(4) of the Act 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 learned Counsel for the answering respondents also reproduced Section 19(3) of the Act of 2016 and as per this provision, the complaint under the Act of 2016 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 complainants to file the present complaint.

7.9 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. 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 and Rules and Regulations.

7.10 The respondents have 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 complainants failed to invoke this Clause.

7.11 The respondents 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.

On merits, these respondents while repeating the contents of preliminary submissions and objections here added that

7.12 They denied the amounts paid by the complainants.

7.13 It is alleged that the construction of the Tower is going on and the possession will be handed over shortly. The date of completion of the project being 9 years, the respondents stated that claim of refund and interest thereon would only arise once the possession has not been handed over. As such the complainants are not entitled for any relief and prayed that the complaint be dismissed with costs.

8. Reply on behalf of respondent no.4 has also been filed. It is stated that respondent no.4 had sanctioned a loan of R.17,46,500/- against Loan Account No.620471452 and thereafter Home Loan Agreement and Tripartite Agreement was executed on 29.06.2016 and 23.06.2016 respectively. Respondent no.4 further in para no.4 of the reply to the brief facts clearly mentioned "*that as of date the complainants/ borrowers have discharged his loan liability in its entirety and a no-due letter has already been issued by the answering respondent...*"

9. The undersigned has heard the arguments of both the Counsels for the parties on the stipulated date.

10. The learned Counsel for the complainants argued on the lines of the complaint and stated that possession was to be delivered on or before 23.12.2019 but the same has not been delivered to them till date. It was also argued that out of Rs.49,90,000/- the complainants

had paid Rs.25,24,062/- to the respondents. In view of the non-delivery of possession, the complainants are not interested to continue with the project and prayed that the respondents be directed to refund the amount along with interest thereon.

11. While arguing, Counsel for respondents, admitted the development of their project namely "ATS GOLF MEADOWS LIFE STYLE" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab, allotment of Apartment bearing No. 10044, on 4th floor of Tower No.10 in the above project to the complainants and also admitted the issuance of allotment letter and execution of Buyer Agreement both on 23.06.2016. However, the Counsel for the respondents stressed that the date of completion of their project is 9 years" i.e by 01.09.2026 as per Form-B submitted with this Authority, thus no cause of action arisen in favour of the complainants to file the present complaint. The Counsel for the respondents also referred Clause 35 and Clause 37 of the agreement whereby any dispute between the parties shall be settled amicably by mutual discussion and that the courts at Noida, Uttar Pradesh have the exclusive rights and jurisdiction to hear the dispute and decide the matter.

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

13. The main stress laid down by the Counsel for the respondents was upon the completion date of the project granted by this Authority i.e. 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). This argument has no merit and is accordingly rejected.

14. It is to be noted that perusal of Clause 14 – Time of Handing Over possession- of the Buyer Agreement dated 23.06.2016 revealed that *“the possession of the said Apartment is proposed to be, delivered by the Company to the Allottee **within a period of 42 (forty Two) months with a grace period of six months from the date of actual start of the construction of a particular Tower/Building....”***.

15. However, there was not an iota of evidence available on record about the start of construction of particular tower during the course of the arguments. It is the bounden duty of the respondents to place on record evidence about the start of construction of Tower No.8 wherein the apartment of the complainants is situated.

16. It is also noteworthy that the lockdown as a result of COVID 19 pandemic was imposed w.e.f 23.03.2020 to 07.06.2020 and thereafter also human activities remained stalled for certain period. In the present case if the date of possession as per Clause 14 of the agreement dated 23.06.2016 is considered to be 48 months it comes out to be 23.12.2019.

17. Further perusal of Clause 15 -Delay in Handing Over of possession- of the agreement for sale dated 23.06.2016, revealed that if the delivery of possession of the apartment is delayed due to *force majeure*, then the respondent/promoter is entitled for reasonable extension. It is noteworthy here that this Authority vide Circular No.RERA/ENF-2020/23 dated 28.10.2020 as per para 4a.” for

all registered projects where completion date or revised completion date or extended completion date is on or after 15 March 2020, the period of validity for registration of such projects shall be automatically extended by six months from the original date. This extension will be allowed without payment of extension fee".

18. In any case, if the refund is to be allowed with interest that was to be allowed from the date of payments till realization of the due amount. This circular dated 28.10.2020 thus, is not applicable as the complainants have sought refund of their deposited amount along with interest.

19. The next argument raised by the learned Counsel for respondents is about the presence of an arbitration Clause No.35 in the Buyer Agreement dated 23.06.2016. However, this Authority had already held in various orders that presence of an arbitration 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 v/s Aftab Singh** (Review petition nos. 2629 and 2630 of 2018). This argument of respondents is also without merit.

20. Further the argument of respondents that only the Courts situated at NOIDA, Uttar Pradesh has the jurisdiction to adjudicate upon the disputes as per Clause 37 mentioned in the agreement is also without any substance. It is a matter of record that the project "ATS Golf Meadows Lifestyle" is situated in the State of Punjab and the Buyer Agreement executed on 23.06.2016 is for a real estate project situated at Village Madhopur, Tehsil Derabassi, District SAS

Nagar (Mohali). This Authority thus has the necessary jurisdiction to entertain and decide the present complaint under the Act of 2016.

21. It is alleged by the respondents as per para 4 of their reply dated 28.08.2024 on merits that "*..regarding the amount(s) paid by the complainants are not admitted and the complainants be put to strict proof the same..*". To counter this point, the complainants have attached two Receipts dated 19.03.2016 and 19.05.2016 amounting to Rs.5,00,000/- and Rs.2,77,562/- respectively totaling to Rs.7,77,562/- (Annexure C/1-colly) issued by respondent no.1 duly stamped by their authorized representative.

22. Further as per para 6 of the reply dated 19.02.2024 submitted by respondent no.4/HDFC Bank Limited, it is clearly mentioned by respondent no.4 that the complainants have been sanctioned a loan of Rs.17,46,000/- which was subsequently disbursed to them towards the sale consideration of the Unit. It is further mentioned by respondent no.4/HDFC Bank Limited in para 7 of its reply to the brief facts "that, as on date, the complainants/borrowers have discharged their loan liability in its entirety and a no-due letter has already been issued by the answering respondent...". The complainants have attached Annexure C/6 – no due certificate – (page 39 of the complaint paper book) with their complaint issued by HDFC Limited (now HDFC Bank Limited) on 09-Jan-2023, in favour of Wg Cdr Bandopadhyaya Koushik and Mrs. Bandapadhyaya (present complainants) stating therein "that no amount is now due from him/her/them towards or in respect of the said loan..". From the reply and these documents it is clear that the complainants have paid the total amount of Rs.17,46,000/- disbursed by respondent no.4/HDFC

Bank Limited. Thus, the total sum of amounts Rs.7,77,562/- + Rs.17,46,000/- is Rs.25,24,062/- has been paid by the complainants to respondent no.1. In the complaint, the complainants have prayed for refund of this amount of Rs.25,24,062/-/- along with interest. Thus, the objection of the respondents that amounts paid by the complainants are not admitted, has no substance and accordingly it is rejected.

23. From the above facts it is established on record that till today possession of apartment bearing No.10044, on 4th Floor, of Tower No.10 having Super Area of approximately 1900 Sq. ft in the project "ATS Golf Meadows Lifestyle" being developed by the respondents at Village Madhopur, Derabassi, Mohali, Punjab, has not been handed over to the complainants till date, hence the complainants are within their right to seek refund of their deposited amount along with interest in view of the provisions of Section 18(1) of the Act of 2016.

24. Section 18(1) of the Act 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) 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”*

25. As a net result of the above discussion, this complaint is accordingly allowed and respondents are directed to refund the amount of Rs.25,24,062.00 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.

26. It is also further directed that the refund along with interest thereon should be made by the respondents 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.


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

28. The complainants are also directed to submit report to this Authority that they have received the due amount along with interest as per directions issued in this order. Till then the complainants shall

have the charge on the allotted residential apartment bearing No.10044, on 4th Floor, of Tower No.10 having Super Area of approximately 1900 Sq. ft in the project "ATS Golf Meadows Lifestyle" being developed by the respondents at Village Madhopur, Derabassi, Mohali, Punjab. The complainants are further directed to execute a Cancellation Deed on receipt of full payment of refund and interest thereon from the respondents thereafter.

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

Announced.


(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab