

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

Complaint No. GC No.0405 of 2023  
Date of Institution : 02.11.2023  
Date of Decision: 11.02.2025

1. Sanjay Gupta
2. Chitra Gupta

Both residents of House No.340, Sector 20-A, Chandigarh, PIN  
Code 160020

...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

....Respondents

Present: Shri Vipin Kumar, Advocate for complainants  
Shri Hardeep Singh, Advocate for Shri J.P.Rana, Advocate  
for respondents

**ORDER**

This complaint was instituted on 02.11.2023 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 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) against the respondents seeking refund of the whole amount deposited by the complainants with the respondents along with interest, for purchase of apartment bearing No.8094, on 9<sup>th</sup> Floor, of Tower No.08 having Super Area of approximately 1350 Sq. ft in their project "ATS Golf Meadows Lifestyle" (Registration number PBRERA-SAS79-PR0007) 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 March, 2016, the complainants booked an apartment bearing No.8094, on 9<sup>th</sup> Floor, of Tower No.08 having Super Area of approximately 1350 Sq. ft with the basic sale price of Rs.34,90,000/- at "ATS Golf Meadows Lifestyle" being developed by the respondents situated at village Madhopur, Derabassi, Mohali, Punjab.

3.2 It was informed to the complainants that the said project has all approvals and sanctions from the competent authorities in the name of Respondents no. 2 & 3.

3.3 The respondents also assured that the development being carried out was in full swing and the apartment would be ready for the possession within 3 to 3.5 years.

3.4 The complainants paid a total amount of Rs.18,39,793/- to the respondents on various dates as per schedule.

3.5 Allotment letter was issued on 20.04.2016 by the respondents and respondents also entered into buyer's agreement on same date.

3.6 As per the agreement possession of the apartment would be handed over within 42 months i.e. on or before 20.10.2019.

3.7 The complainants intimated the respondents that the development was going on very slow speed and it would be impossible for the project to meet the stipulated date of agreement.

3.8 The respondents assured the complainants that possession would be handed over in January, 2020.

3.9 The complainants visited the site in January, 2020 and found that no work was going on and there was no possibility of possession in near future despite receiving about 50% of the total cost from the complainants. Even today the completion of project is too far for completion and no work is going on at the site.

3.10 The complainants have lost confidence in the project of the respondents and hence wished to withdraw from it.

3.11 It is submitted by the complainants that the respondents have violated Section 18 of the Act of 2016 and the present complaint is being filed under Section 31 of the said Act of 2016.

4. It is the prayer of the complainants that the respondents be directed to refund the whole amount of Rs.18,39,793/- to the complainants along with interest. In support of their case, the

complainants have attached a photocopy of Account Ledger, Allotment letter, and Buyer Agreement as Annexures C-1 to C-3 respectively.

5. Notice was issued to all the respondents on 17.11.2023. Shri J.P.Rana, Advocate appeared on behalf of all the respondents on 19.01.2024 and sought time to submit reply. Reply dated 28.08.2024 was submitted by the respondents.

6. In the reply submitted on behalf of all the respondents, following points have been highlighted by them that:

6.1 They are developing the project namely "ATS GOLF MEADOWS LIFE STYLE" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab.

6.2 It is admitted that the complainants entered into Buyer Agreement with respondents on 20.04.2016 in respect of Apartment bearing No.8094, on 9<sup>th</sup> floor of Tower No 8, in the above said residential project "ATS GOLF MEADOWS LIFE STYLE".

6.3 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' submitted with this Authority at the time of registration of said project, the completion time of the Project consisting of 15 Towers, has been declared to be "9 years" i.e by 01.09.2026.

6.4 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 has also taken preliminary objections to the effect that

6.5 No cause of action has 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 said project from the date of registration and these 9 years would expire only on 30.08.2026. It is further alleged that this Authority has no jurisdiction to entertain and try the complaint.

6.6 The respondents further submitted that said Buyer Agreement was entered upon on 08.06.2017 (respondents mentioned this date wrongly, actually the agreement was executed between the complainants and respondents on 20.04.2016) 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 national wide 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.

6.7 This Authority has got no jurisdiction to try and decide the instant complaint for the alleged violations stated in the complaint.

6.8 It is alleged that the provisions of the Act of 2016 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 of 2016 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 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 be filed only after 01.09.2026. Thus, no cause of action arisen in favour of the complainants to file the present complaint.

6.9 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.

6.10 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.

6.11 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, the respondents here again repeated the contents of preliminary submissions and objections and stated that

6.12 The amounts paid by the complainants are not admitted.

6.13 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 arise only 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.

7. It is noted that no rejoinder has been filed by the complainants.

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



9. The learned Counsel for the complainants argued on the lines of the complaint and stated that possession was to be delivered on or before 20.10.2019 but the same has not been delivered to them till date. It was also argued that out of Rs.34,90,000/- the complainants had paid Rs.18,39,793/- 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.

10. 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. 8094, on 9<sup>th</sup> floor of Tower No.8 to the complainants in the above project and also admitted the issuance of allotment letter and execution of Buyer Agreement both on 20.04.2016. However, the learned 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 has 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 buyer 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.

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

12. The main stress of the learned 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.

13. It is to be noted that perusal of Clause 14 – Time of Handing Over possession- of the Buyer Agreement dated 20.04.2016 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....***".

14. However, there was not an iota of evidence available or produced by the respondents 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.

15. 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 20.04.2016 is considered to be 42 months it comes out to be 20.10.2019.

16. Further perusal of Clause 15 -Delay in Handing Over of possession- of the agreement for sale dated 20.04.2016, 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*".

It is worth to note here that the Buyer Agreement dated 20.04.2016 (Annexure C-3) entered into between the complainants and respondent no.1 along with Annexures-I, Annexure-II and Annexure-III is only signed by respondent no.1 with stamp of their authorized representative. There are no signatures of the 'Buyer' on all these documents. This document has been attached by the complainants with their complaint. However, in the reply and during the course of arguments by the learned Counsel for the respondents no dispute about the authenticity of these documents was raised by him.

17. 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.

18. 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 20.04.2016. 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.

19. 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 20.04.2016 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.

20. 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 Account Ledger (Annexure C/1) maintained by the respondents themselves showing the total payment of Rs.25,38,793.00 received from the complainants upto 21.09.2016.

Further, the bare perusal of this Annexure C/1 revealed that there are two reversal entries dated 07.04.2016 and 09.05.2016 amounting to Rs.4,99,000/- and Rs.2,00,000/- respectively totalling to Rs.6,99,000/-. If this amount of Rs.6,99,000/- is subtracted from Rs.25,38,793/-, the remainder amount will be Rs.18,39,793/-. In the complaint, the complainants have prayed for refund of this amount of Rs.18,39,793/- only 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.

21. From the above facts it is established on record that till today possession of apartment bearing No.8094, on 9<sup>th</sup> Floor, of Tower No.08 having Super Area of approximately 1350 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 them, 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.

22. 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"*

23. As a net result of the above discussion, this complaint is accordingly allowed and respondents are directed to refund the amount of Rs.18,39,793/- 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 payments to the respondents till the date of actual refund.

24. 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.

25. 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.

26. 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.8094, on 9<sup>th</sup> Floor, of Tower No.08 having Super Area of approximately 1350 Sq. ft in the said project. The complainants are further directed to execute a Cancellation Deed on receipt of full payment of refund and interest thereon from the respondents thereafter.

27. File be consigned after due compliance.

  
(Binod Kumar Singh)  
Member, RERA, Punjab

Rera, Punjab