

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

Complaint No.0059 of 2024
Date of Institution : 08.02.2024
Date of Decision: 11.09.2024

1. Sham Kumar Sharma son of Shri Raflu Ram
2. Vijaya Sharma wife of Shri Sham Kumar Sharma

Both residents of House No.1016, Lane-1, Ram Sharma Colony,
Dalhousie Road, Pathankot, Punjab.

....Complainants

Versus

1. M/s ATS Estates Pvt. Ltd., 711/92, Deepali, Nehru Palace, New Delhi.
2. ATS Infrastructure, Pvt. Ltd., 711/92, Deepali, Nehru Palace, New Delhi.
3. Dynamic Colonizers Pvt. Ltd., 711/92, Deepali, Nehru Palace, New Delhi.

....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 Sanjeev Gupta and Shri Ripudaman Singh, Advocates for the complainants
Shri J.P.Rana and Shri Hardeep Saini, Advocates for the respondents

ORDER

Through the instant complaint, complainants seek refund of the amount of Rs.19,20,477/- along with interest thereon.

2. In brief, complainants booked a residential apartment in March, 2016 in the project "ATS Golf Meadows Lifestyle" being developed by respondents at Derabassi, District Mohali, Punjab and paid a sum of Rs.5,42,477/- including service tax. Thereafter an Apartment No. 09054, on 5th floor, Tower no. 9, measuring 1350 sq. ft. approximately of super area, along with 01 car parking, was allotted to complainants for a total sale consideration of Rs.35,40,000/- inclusive of basic sale

price of Rs.34,90,000/- and IFMS of Rs.50,000/-. A buyer agreement **(Annexure C-1)** was also entered into between complainants and respondents on 11.04.2016 and as per its Clause 14 possession of the apartment was to be delivered, within 48 months (42 months plus 6 months' grace period) from the date of start of construction of particular tower/building. After availing a loan from financing institution, and execution of a tripartite agreement **(Annexure C-2)** between parties and financing institution, complainants had paid a total amount of Rs.19,20,477/- to the respondents **(Annexure C-3)**. Respondents vide its letter 13.02.2017 **(Annexure C-4)** intimated complainants about start of construction of Tower no.9 on February, 2017. The committed date of possession has already expired in February, 2021 and respondents have failed to deliver the possession of the apartment to complainants till date. As such complainants are not interested to stay in the project. Complainants had repaid the loan availed from HDFC Bank vide No Objection Certificate dated 25.07.2017 issued by HDFC bank **(Annexure C-5)**. Hence, this complaint seeking relief of refund along with interest thereon.

3. Upon notice, Shri Hardeep Saini, Advocate appeared and filed Power of Attorney of himself along with of Shri J.P.Rana Advocate for all the respondents. Thereafter reply dated 24.12.2024 was filed by respondents.

4. In the reply filed on behalf of respondents, 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. Respondents admitted entering into agreement to sell on 11.04.2016 for Apartment No. 09054, on 5th floor, Tower no. 9, in its project "ATS Golf Meadows Lifestyle". Further,

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 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. Respondents 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 respondents has also taken preliminary objections that no cause of action arisen in favour of the complainant. Respondents 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 respondents 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,

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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 the Act of 2016 and Rules and Regulations. The respondents relying on the decision of M/s Shanti Conductors (P) Ltd. Anr. Vs. Assam State Electricity Bord & Ors., contended that the provision of the Act of 2016 cannot be read into the already executed contract and as the Legislation is always prospective, the complainant cannot invoke the jurisdiction of this Authority on the agreement already executed. The learned Counsel for the respondents also referred the judgement titled "*Bharti Knitting Vs. DHL*" of the Hon'ble Apex Court and the judgement of the Hon'ble Bombay High Court in the case titled "*Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors.*" (W.P 2737 of 2017), reported as 2018(1) RCR (Civil) 298. 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 complainant failed to invoke this Clause. 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.

6. On merits, it is averred that respondents have paid a sum of Rs.73,915/- on behalf of complainants to HDFC Bank Limited towards pre-EMIs. It is further emphasized that contract between the parties to a 'make endeavour' which is subject to other conditions and not limited

to payments of due installments. Refund and interest thereon cannot be allowed as there is no violation of the Act of 2016. It is prayed that complaint be dismissed with costs.

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

8. While reiterating the contents of their complaint, complainants argued that they were allotted Apartment No. 09054, on 5th floor, Tower no. 9, for a total sale consideration of Rs.35,40,000/- inclusive of basic sale price and IFMS charges. As per clause 14 of the buyer agreement dated 11.04.2016 possession was to be delivered within 48 months from the date of start of construction of particular tower/building and as per respondents' letter 13.02.2017 construction of Tower no.9 was started on February, 2017. It is argued that possession of the apartment was to be delivered on or before February 2021. But respondents failed to deliver the same. Complainants had already paid a total amount of Rs.19,20,477/- to the respondents. Now complainants are not interested to stay in the project and sought refund of Rs.19,20,477/- along with interest thereon.

9. On the other hand, Counsel for the respondents at the time of arguments, admitted entering into agreement to sell for Apartment No. 09054, on 5th floor, Tower no. 9, on 11.04.2016. He further argued that as per registration letter dated 01.09.2017, completion date is 01.09.2026. It is further argued that if any dispute is arisen qua this agreement to sell that can be settled by the Sole Arbitrator under the provisions of Arbitration and Conciliation Act, 1996. Respondents admitted THAT possession was to be delivered in February 2021 as per Clause 14 of the agreement to sell but due pandemic of Covid-19 construction activities were affected and possession was delayed. It is further argued that respondents have paid Rs.73,915/- to HDFC Bank

Limited towards pre-EMIs on behalf of complainants. It is further argued that refund and interest thereon cannot be allowed as there is no violation of the Act of 2016. However, he argued that in case this Bench is considering to refund the amount deposited by complainants, then a sum of Rs.73,915/- already paid by respondents to HDFC Bank Limited be set off from the due interest payable by respondents to complainants. It is prayed that the complaint be dismissed.

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

11. From the above, it is established on record that possession of the allotted apartment was to be handed over to complainants by respondents in February 2021, but on their failure to do so, complainants filed the instant complaint seeking refund along with interest thereon. Complainants have been waiting for possession of their Apartment for a long period of time and there is still no commitment on behalf of respondents as to the time by which its possession would actually be delivered to complainants. In this background this Bench is of the considered view that it would be manifestly unfair to complainants to make them wait for actual relief of possession for a further period of time, the duration of which is not known at this stage. Thus, the withdrawal by complainants from the project "ATS Golf Meadows Lifestyle" being developed by respondents at Derabassi, Zirakpur, Punjab where they have been allotted Apartment No. 09054, on 5th floor, Tower no. 9, is fully justified and is allowed. It is held that complainants are entitled for refund of the amount deposited by them with respondents 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..":


12. As a result of the above discussion this complaint is allowed and respondents are directed

12.1 to refund the amount of Rs.19,20,477/-, deposited by complainants with respondents 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.

12.2 Respondents are entitled to set off Rs.73,915/-, paid to HDFC Bank Limited on behalf of complainants towards pre-EMIs.

12.3 The refund along with interest thereon shall be paid within the statutory time i.e ninety days stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

13. File be consigned after due compliance.


(Binod Kumar Singh)
 Member, RERA, Punjab