BEFORE SHRI ARUNVIR VASHISTA, MEMBER
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A, MADHYA MARG, CHANDIGARH.

Complaint No. GC No.0060 of 2024
Date of Institution: 08.02.2024
Dated of Decision: 15.10.2025

Suresh Kumar Shastri son of Late Raflu Ram Sharma C/o Vice Principal Jawahar Navodaya Vidyalaya Basohil, District Kathua, Jammu & Kashmir.

...Complainant

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 Colonisers Pvt. Ltd. 711/92, Deepali, Nehru Palace, New Delhi.

...Respondent

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Mr. Ripudaman Singh, Advocate representative for the complainant
Mr. Hardeep Saini, Advocate representative for the respondents

ORDER

The present complaint had been filed by complainant under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the respondents promoter seeking refund of Rs.21,79,571/- alongwith interest as contemplated under Rule 16 of Punjab Real Estate (Regulation & Development) Rules 2017 from the respective dates of deposits till the date of actual realization of the same on account of delay in handing over possession of apartment in the project 'ATS Golf Meadows Lifestyle' being developed by the respondents at Derabassi, District SAS Nagar, Mohali, Punjab.

2. As per averments in the complaint, complainant booked a residential apartment in the project namely 'ATS Golf Meadows Lifestyle' in March, 2016 by depositing the booking amount of Rs.8,92,477/- plus service tax amounting to Rs.12,244/-. An apartment bearing no.09051 in tower no.09 on 5th floor having super area of 1350 Sq. ft. alongwith one car parking was allotted to the complainant vide provisional allotment letter dated 25.03.2016. A flat buyer agreement dated 25.03.2016 was executed by the parties containing the detailed terms and conditions for the intended sale of the apartment. The total sale consideration of the flat was fixed as Rs.35,40,000/-, which was inclusive of basic sale price of Rs.34,90,400 and IFMS of Rs.50,000/-. As per clause 14 of the buyer agreement, possession of the apartment was to be delivered, as per the specifications mentioned in the agreement, within 42 months with a grace period of 6 months from the date of start of construction of the particular tower/ building. A tripartite agreement was also executed between the parties and the financier bank as per which, after paying the booking amount, the next instalment of Rs.12,21,500/- was due within 30 days from the date of booking. Accordingly, the complainant paid a total sum of Rs.21,79,571/- to the

respondents. As per letter of respondent dated 13.02.2017, the construction of tower no.09 in question was intimated by the respondent as February 2017. Thus, calculating on that basis the possession of the flat in question was to be handed over by the respondent on or before 15.02.2021. The complainant from time to time had been asking the respondent the status of the construction of the project but the respondents have failed to construct the structure of said tower till date. The respondents promoter also did not make any demand for further payment because part of the balance sale consideration as per payment plan was payable on completion of the construction and the remaining sale consideration further was payable at the time of offer of possession of the flat in question. The respondents promoter however failed to complete the construction of the project in respect of the flat within the stipulated time and the project was incomplete till date. The complainant feeling dissatisfied because of the unnecessary delay in completion of the project chose to withdraw from the project and seek refund of the amount paid alongwith interest. Hence, the present complaint.

3. Upon notice, respondents appeared and contested the complaint by taking preliminary objections that complainant had no cause of action to file the complaint under the provisions of the Act as the date for completion of the project declared to the RERA authority by the promoter at

the time of registration of the project was 01.09.2026 i.e. within a period of 9 years from the date of registration of the project on 01.09.2017. The present complaint under the provisions of the Act was not maintainable as the transactions of the case in hand pertained to the year 2016 i.e. prior to the commencement of the Act, which was prospective in nature and not retrospective. There was arbitration clause in the flat buyer agreement, according to which any dispute between the parties in relation to the said agreement was required to be referred to the Arbitrator. The complainant had not purchased the flat in question for his bonafide personal use, but only for the purpose of speculative gains and therefore did not fall within the definition of consumer and was thus not entitled to protection under the Act. Only Civil Court at Noida had the jurisdiction to decide the controversy between the parties in view of the stipulation in the flat buyer agreement in this behalf. On merits, the booking and allotment of apartment in question to the complainant and execution of buyer agreement was admitted by the promoter, however the payment of the amounts as claimed by the complainant was not admitted. Though it was not denied that the possession of the flat in question could not be offered within the stipulated time, but it was claimed that delay in completion of the project of the case in hand was due to the circumstances beyond the control of the respondent promoter. Further agitating that the respondents promoter could complete the project within a period of 9 years from the date of registration of the project on 01.09.2017 and therefore the complainant was not entitled to any relief because the promoter would complete the project and handover its possession. Denying rest of the averments of the complaint respondents prayed for dismissal of the complaint.

4. The violations and contraventions contained in the complaint were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was proceeded for further enquiry.

5. I have heard the learned authorized representatives of the respective parties. The arguments of the authorized representatives had been on the lines of the averments contained in their respective pleadings and elaboration thereof shall be made in the course of the discussion.

6. The first legal point raised on behalf of the respondent was that the transaction of the case in hand pertained to the year 2016 while the RERA Act, which came into force lateron, thus was not applicable in the case in hand. The argument however is without merit inasmuch as it may be that the transaction of the case in hand pertained to the year 2016, but the project of the case in hand was ongoing and had not been completed by the time the RERA Act came into force and was rather got registered with the Authority. It is well settled that the Act would certainly regulate the existing contracts, even though, it is prospective

in nature, but, is retroactive also to some extent. Reference in this connection may be made to the law laid down by the Hon'ble Bombay High Court in case titled as ***Neel Kamal Realtors Suburban Pvt. Ltd and another* Vs. *Union of India and others,*** bearing Writ Petition No.2737 of 2017 decided on 06.12.2017, wherein, it was held that unilateral contracts of the prior period not being in accordance with the provisions of the Act are not enforceable to that extent and the provision of the Act would be applicable to cover the ongoing projects got registered with RERA Authority; to the same effect is the authority of Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others** along with connected appeals decided on 11.11.2021. Therefore, the present complaint is maintainable.

7. Another legal argument raised on behalf of the respondent was that no cause of action had arisen to the complainant, as the time for completion of the project had been declared by the respondent with the RERA Authority till 01.09.2026 at the time of registration of the project is devoid of any force as the Hon'ble Bombay High Court in ***Neel Kamal Realtors Suburban Pvt. Ltd and another* Vs. *Union of India and others (supra)*** has been very categorical with regard to the agreements entered between the parties even prior to coming into force of this Act and in this respect the paragraph 119 is reproduced herein below:-

"**119.** Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and an allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature."

8. In the above said case, the Hon'ble Bombay High Court has also made this point clear in paragraph 256 and 261 which are reproduced below: -

> failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. In other words, the liability under Section 18(1) (a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

9. In view of above observations, the plea of the respondent that they had given a declaration for completion of project by 01.09.2026 while registering the project with the Authority, is not tenable as the flat buyer agreement between the parties was admittedly executed on 25.03.2016 and date given by the promoter to the allottees for handing over the possession of the flat was within 42 months plus extended period of six months from the date of start of construction of tower in question i.e. upto February, 2021. Therefore, the promoter cannot take the benefit of the completion date of the project i.e. 01.09.2026 given at the time of registration of the project rather the date of completion of the project as per stipulation in the flat buyer's agreement shall be applicable according to which the possession of the flat on completion of the project was to be handed over up to February 2021. The argument is accordingly repelled.

10. Another objection taken by the respondent was that complaint alleging violations of the provisions of the Act was maintainable only in respect of the agreements, which had been executed as per Rules, 2017 of the Act. However, as already noticed it was held by the Hon'ble Bombay High Court in **Neel Kamal Realtors Suburban Pvt. Ltd.' s case (supra)** that RERA is applicable to the projects, which were ongoing and subsequently got registered under the RERA Act. Therefore, the complaint is maintainable.

11. The representative of the respondent also raised the objection that there was an arbitration clause no.35 contained in flat buyers' agreement according to which, the dispute between the parties was to be referred to the sole arbitrator and this Bench had no jurisdiction to adjudicate the controversy between the parties. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act, which reads as under: -

> "79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

> 88. The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.
>
> "89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

12. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, the remedy available to the complainants under the Act still subsists as it is in addition to remedy available before in any other forums. The argument is accordingly repelled.

13. It was also agitated that the complainant had not purchased the flat for his bonafide personal use but only for the purpose of speculative gains and did not fall within the definition of consumer and therefore, complainant was not entitled to protection under the Act.

14. The argument, however, is without substance because the Real Estate (Regulation and Development) Act 2016 is self-contained Code to deal with the dispute between the allottee(s) and promoter(s) as per provisions of the said Act before the RERA Authority or the Adjudicating Officer as the case may be and under the provisions of RERA there is no requirement that allottee must be an end consumer and the provisions of the Consumer Protection Act, 2019 are not

applicable for adjudicating the said dispute between the parties by the RERA Authority or the Adjudicating Officer. The argument is accordingly repelled.

15. Though, it was argued on behalf of the promoter that there was stipulation in the flat buyer's agreement in Para no.37 that only the Civil Court at Noida, Uttar Pradesh would have the exclusive jurisdiction to entertain and decide the dispute between the parties in relation to the agreement in question but we find that the project of the case in hand is situated in village Madhopur, Punjab and the agreement between the parties was also executed in the State of Punjab and the project of the case in hand was got registered with the RERA, Punjab being an ongoing project therefore this Bench has the jurisdiction to entertain and decide the dispute between the parties of the case in hand and the argument is accordingly repelled.

16. It was lastly submitted on behalf of the respondents/ promoter that under the terms of the tripartite agreement that was entered into between the respondents, complainant and HDFC Limited, the respondent company had paid an amount of Rs.79,848 on behalf of the complainant to HDFC Bank towards PRE-EMI's under the terms of a subvention scheme opted by the complainant at the time of availing the housing loan. It was thus submitted that the obligation to refund the principal sum must be to the

exclusion of the above said amount since the builder had under the terms of the subvention scheme paid the amount over to HDFC Limited. This submission on behalf of the respondents does not carry much weight or substance in view of the observations made by Hon'ble Apex Court in **Prateek Infra Projects India Pvt. Ltd. Versus Nidhi Mittal and Another, Civil Appeal No.2504 of 2020** wherein it was observed by the Hon'ble Apex Court that "the order for refund did not warrant any interference since under the terms of the subvention scheme, interest was payable by the developer to the bank for a stipulated period, which however cannot dilute the responsibility of the developer to refund the entire amount of consideration which had been received for the flat to the flat buyers".

17. The argument on behalf of the complainant was that the complainant had complied with his obligation under the buyer's agreement and paid total sum of Rs.21,79,571/- by way of sale consideration and the project was to be completed by February 2021 and the possession of the apartment was to be handed over after the completion of the project but the promoter failed to complete the project despite lapse of stipulated date and the project had been delayed for more than 4 years till date without any justification and therefore, complainant got the right to withdraw from the project and seek refund.

18. On the other hand, the argument on behalf of the respondent-promoter was that the project could not be completed despite best efforts of the promoter and even otherwise the project was to be completed by 2026 and therefore the complainant was not entitled to withdraw from the project nor could seek refund.

19. As per buyer's agreement executed between the parties the project was to be completed and the possession of the apartment in the project of the respondent was to be handed over within 48 months (including exemption of 6 months) from the start of construction of Tower No.09 which commenced w.e.f. February 2017 and therefore the project was to be completed and possession was to be handed over by February 2021. Complainant had already paid Rs.21,79,571/- as per payment plan out of the total sale consideration and the balance amount was payable partly on completion of the construction and rest of the amount of sale consideration was payable at the time of offer of possession. Therefore, the complainant substantially complied with the terms and conditions of the buyer's agreement. As already noticed, the construction has yet not been completed nor for that matter offer of possession had been made. Respondent also agitated that the project was to be completed by 2026 as per declaration given by the promoter at the time of registration of the project. We however need not dilate on this argument because this argument has already been discussed

and rejected by holding that the project of the case in hand was to be completed by February 2021 as per stipulation of the flat buyer's agreement. It is however not disputed between the parties that project has neither been completed nor any offer for possession was made by the stipulated date and even till date project is still incomplete as no completion certificate has been placed on record so far and the project has been delayed for a period of almost more than four years from the stipulated date. Therefore, the lapse for con-completion of the project was of the promoter because of which complainant can certainly withdraw from the project and seek refund. If any authority is needed reference in this connection may be made to **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others (Supra)** in which Hon'ble Apex Court was pleased to hold that allottees were at liberty to withdraw from the project and seek the relief of refund under Section 18 of the RERA Act in case the builder fails to complete the project within stipulated period.

20. The default of the respondent in the aforesaid circumstances attracts the mischief of Section 18(1) of the RERA Act, which runs 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) xxxx xxxx

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."

21. As an outcome of the above discussion, the complaint is accepted and the respondents are directed to refund the amount deposited by the complainant along with interest thereon at the prescribed rate (today's highest MCLR rate plus 2%) from the date of deposit till the date of its refund. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

(Arunvir Vashista),
Member, RERA, Punjab.