

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

Complaint No.0184 of 2024

Date of Institution: 21.05.2024

Dated of Decision: 17.02.2026

Shri Deepak Kumar, 51B, 2 FLR, 07, Dada Chatri Wale Marg, Raj Nagat-
1, Palam Colony, South West Delhi, Delhi-110045

....Complainant

Versus

1. M/s ATS ESTATES PRIVATE LIMITED,711/92, Deepali, Nehru Place,
South Delhi, Delhi-110019.
2. M/s HDFC, Bank Ltd, HDFC Bank House, Senapati Bapat Marg, Lower
Parel, Mumbai-400013

....Respondents

Present: 1. Shri Abhijeet Singh Rawaley, Advocate for the complainant,
2. Shri Hardeep Saini for the respondent no. 1,
3. Shri Sushant Kareer, Advocate, for the Respondent no. 2.

ORDER

1. This complaint in Form 'M' 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) was instituted on 21.05.2024 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 The interest amounting Rs.2,42,000/- charged by Respondent No. 1 be declared as illegal and arbitrary, having no basis in either the Agreement for Sale or in any law for the time being in force, and the same be forthwith refunded along-with interest @18% p.a.

1.2 Respondent No.1 be directed for complete and qualitative possession of the plot in question with all developmental works of the project complete and

functioning, and till such time pay delay interest @18% p.a. of the consideration per month to the complainant.

2. Brief facts of the complaint as submitted by complainant are summarized below: -

2.1 A payment of Rs.21,000/- was made by the Complainant on 15.12.2019 towards the purchase of a plot in the respondent's project "ATS Golf Meadows-V" vide Cheque number 358909. Further a sum of Rs.2,31,211/- on 23.12.2019 was paid vide Cheque number 398070. Thus, a total of Rs.2,52,211/- was paid as booking amount along-with his application for allotment.

2.2 On 02.01.2020, the complainant entered into an Agreement for Sell with ATS Estates Private Limited ("Respondent No. 1 / Promoter") for the purpose of purchasing plot No.152, having an area of 146.50 square yards and pro rata share in the common areas at the project "ATS Golf Meadows-V". A copy of the said Agreement for Sale dated 02.01.2020 is being annexed herewith as enclosure C-1.

2.3 The total sale consideration for the said plot was Rs.25,05,150/- and the complainant has paid the said consideration in full as on date.

2.4 As per Clause 7.1, the Promoter/Respondent No.1 was obligated to handover actual qualitative possession of the subject plot latest by 02.07.2021. Till date, no proper and complete offer of possession of the subject plot has been made after having completed all external developmental works in the Project.

2.5 The complainant stated that the said Agreement for Sale, in original, was submitted to the Housing Development Finance Corporation Limited ("Respondent No. 2 / HDFC") for the purpose of seeking the advancement of a loan for purchase of the subject plot. However, due to lapses on the part of HDFC, no loan was advanced; and the original copy of the said 'Agreement for

Sale' was also negligently misplaced by HDFC; and neither returned to complainant nor to the Promoter. Therefore, Respondent No. 2 / HDFC is a necessary party to the present Complaint. Copy of the Agreement for Sale dated 02.01.2020 was available with the complainant has been annexed herewith as Enclosure C-1.

2.6 In furtherance of the earlier two payments made in 2019, and also in terms of the Agreement for Sale dated 02.01.2020, the Complainant made various payments to the Promoter/respondent no.1 and details of same are as follows:

Date	Sum paid	Remarks
15.12.2019	Rs. 21,000/-	Booking Amount
23.12.2019	Rs. 2,31,211	
16.04.2021	Rs. 10,00,000/-	
07.09.2021	Rs. 4,00,000/-	
25.05.2021	Rs. 6,53,125/-	
15.07.2023	Rs. 2,82,532/-	
Total	Rs. 25,87,868	Full payments
26.07.2023	Rs. 2,42,000/-	Interest
Total	Rs. 28,29,868/-	Total Payment

There is no dispute between the parties that the total sale consideration plus GST plus IFMS charges of Rs. 25,87,868/- stands fully paid by the Complainant, despite there being no proper fully complete and qualitative offer of possession by Respondent No. 1.

2.7 On 09.07.2021, the loan application of complainant was approved by HDFC/Respondent No. 2. Vide dated 25.02.2022, HDFC/Respondent No. 2 issued its No Objection to respondent No. 1 to sell the subject plot to the complainant. That a copy of the said NOC is being annexed herewith as

Enclosure C-4. This was followed up by a request from the promoter to HDFC to waive off the processing fee.

2.8 The Complainant came to know that the original Agreement for Sale dated 02.01.2020 had been misplaced as the entire file of his application to avail the loan from HDFC had been misplaced. In view of the loss of earlier Agreement for Sale dated 02.01.2020, the respondent No. 1/promoter compelled the complainant to execute another 'Agreement for Sale', which was executed on 24.03.2024. On perusal of the said Agreement, it revealed that the certain clauses thereof were changed which are detrimental to the complainant and the stipulated period that possession would be offered by 02.07.2021 was changed to an indefinite period. A copy of the Agreement for Sale dated 24.03.2024 is being annexed herewith as annexure C-2. Clause 7.2 provides that possession would be offered after obtaining Completion Certificate from the competent authority. That till date, no Completion Certificate has been obtained by the respondent no.1.

2.9. That prior to the entering into of Agreement for Sale dated 24.03.2024, the complainant had time and again corresponded with respondent No. 1 and the various e-mails/letters exchanged between them.

2.10 Meanwhile, respondent No. 1 raised demands for payment of interest on account of delayed payment. The complainant paid the Rs.2,42,000 on account of delayed interest under protest.

2.11 The respondent No. 1 offer defective possession of the subject unit to the complainant vide letter dated 04.07.2023 without completing basic developmental works in the Project.

3. Notice of the complaint was served on the respondents who has filed a detailed reply in the matter.

4. The counsel for the respondent no. 1 company has made his submission and asserted that the contentions of the complainant are contrary to and/or

inconsistent with the true and complete facts. The respondent has agreed that the complainants entered into an Agreement to sell with Respondent-Company on 02.01.2020, in respect of Plot bearing No. 152, admeasuring 146.50 Sq meters, in the above said residential project "ATS GOLF MEADOWS-V".

4.1 The respondent is developing the project namely "ATS GOLF MEADOWS-V" at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab. It is submitted that the project namely "ATS Golf Meadows-V" came to be registered with RERA Authority on 18.11.2019 having Registration number as PBRERA-SAS79-PR0543 and the date of completion of the Project is 24.10.2024

4.2 The Respondent-Company has submitted that this Hon'ble Authority has got no jurisdiction to try & decide the instant complaint for the alleged violations mentioned in the complaint. The instant complaint is liable to be dismissed on the ground that no cause of action has arisen to the complainants to file the instant complaint under the provisions of RERA Act.

4.3 The respondent stated that as per the declaration & the affidavit submitted in compliance of Section 4(2)(I)(C) of 2016 Act in FORM B, the completion time of the Project has been declared to be "5 years from the date of the registration". It is submitted that the project namely "ATS GOLF MEADOWS-V" came to be registered on 18.11.2019 vide Memo No. RERA/2019/590; consequently 5-year period would expire on 24.10.2024. Thus, as on date i.e date of filling of complaint, the complainants have no cause of action to file the instant complaint under Real Estate (Regulation & Development) Act, 2016 read with the Punjab State Real Estate (Regulation & Development) Rules, 2017.

4.4 The respondents argued that Sub-Section 3 of Section 19 provides that the Allottee shall be entitled to claim the possession of the apartment, plot or building, as the case may be, as per the declaration given by the Promoter

under Sub-Clause (C) of Clause (I) of Sub-Section 2 of Section 4. Thus, the entitlement to claim the possession alongwith interest would only arise once the possession has not been handed over as per the declaration given by the Promoter under Sub Cause (C) of Cause (I) of Sub-Section 2 of Section 4. Thus, as per section 19(3), the Complainant is not legally entitled to claim possession till 24.10.2024. Consequently, the complaint under RERA to seek delivery of possession would arise only after 24.10.2024.

5. In his reply date 19.06.2024, the respondent no. 2 admitted that loan amounting Rs. 6.00 lakh was sanctioned on 09.07.2021. Further, the loan sanctioned was automatically cancelled on 09.01.2021 as complainant fails to submit disbursement request/related documents with the respondent no. 2. Further, the respondent no. 2 stated that original agreement for sale dated 02.01.2020 was not submitted with the respondent no. 2, only a soft copy of Agreement for sale dated 02.01.2020 was uploaded by the complainant while apply for the loan.

6. The undersigned considered the rival contentions of both the parties and also perused the pleadings along with documents annexed by both the parties

6.1 The Complainant booked and entered into an Agreement to Sell dated 02.01.2020 with Respondent-Company, in respect of Residential Plot bearing No. 152, admeasuring 146.50 sq yard, in the above said residential project "ATS GOLF MEADOWS- V". As per term and condition of payment and details of payment made, it observed that there is a delay of payments on the part of the complainant as per the schedule of Agreement to sell and the complainant is liable to pay the interest on the delayed amount i.e. Rs.4,84,018/-. Both parties agreed that the interest amount was reduced by the respondent no.1 in the form of waiver amounting to Rs.2,42,018/-. The complainant on 26.07.2023 gave a consent letter as well as discharge cum no

dues certificate to the respondent against the abovementioned plot stating everything to be settled. However, possession offer vide letter dated 04.07.2023 by the respondent no.1 without completion certificate is a defective possession. The complainant himself entered in to another Agreement to sell dated 24.03.2023, due to loss of his earlier agreements and fresh agreement over write the existence of old agreement. Furthermore, as per clause 7.2 of Agreement to sell dated 24.03.2023 and submission of the respondent in his reply dated 27.02.2025(para-5), the delivery of possession shall be the date of given in the declaration with the real estate Regulatory Authority, Punjab. As per RERA Memo no. RERA/2019/590 dated 18.11.2019, project complication date is 24.10.2024.

6.2 The preamble of the Act is read as:

"The RE(R&D) ACT, 2016 established the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

6.3 On perusal of the preamble, it clears that the intention of the Act is to protect the interest of the allottee and speedy disposal of redressal. Any terms of the agreement which is in violation of provisions of the RERA Act is not enforceable.

6.4. As a result of the above discussion, this complaint is accordingly partly accepted. The undersigned is of the considered view that complainant is entitled for the receipt of interest from the respondent for the period of delay in handing over possession of the above said Unit as provided in section 18(1) of the Act.

Provisions of the Section 18(1) of the Act is reproduced 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."

7. As a net result of the above discussion, this complaint is accordingly partly allowed and respondents are directed to:

7.1 To issue Offer of Possession letter in writing to the complainant within the time stipulated as per term and condition mentioned in column 7.1 of the 'agreement for sale' dated 25.10.2024 i.e. delivery of possession shall be the date of given in the declaration with the real estate Regulatory Authority, Punjab.

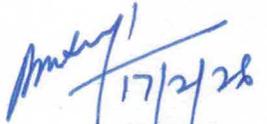
7.2 To pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate i.e. 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs.25,87,868/- paid by complainant, with effect from 25.10.2024 till date of order in the first instance within ninety days from

the date of receipt of this order and submit a compliance report to this Authority about releasing the interest amount as directed.

7.3 To pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate i.e. 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount of Rs.25,87,868/- paid by complainant with effect from 25.10.2024 till actual date of possession or two months after getting the completion certificate by competent authority whichever is earlier.

8. 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.

9. File be consigned to the record room after due compliance.


(Binod Kumar Singh)
Member, RERA, Punjab