

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

Complaint No. GC No.0248 of 2024

Date of Institution: 12.07.2024

Date of Decision: 31.12.2024

1. Jyotsna Dhawan
 2. Rishi Dhawan
- Both residents of J-67, Second Floor, Kirti Nagar, New Delhi,
Delhi, Pin Code 110015

...Complainants

Versus

1. ATS Estate Pvt. Ltd., 711/92, Deepali, Nehru Place, New Delhi-110011
2. ATS Infrastructure Ltd. 711/92, Deepali, Nehru Place, New Delhi-110011
3. Dynamic Colonizers Pvt. Ltd., 711/92, Deepali, Nehru Place, New Delhi-110011
4. HDFC Bank Limited, SCO No.153-155, Madhya Marg, Sector 8-C, Chandigarh, Pin Code 160017

....Respondents

Present: Shri Sanjeev Gupta, Advocate for complainants
Shri Hardeep Singh, Advocate for Shri J.P.Rana, Advocate
for respondents no.1 to 3
Shri Anand Sharma, Advocate for respondent no.4

ORDER

This complaint was instituted on 12.07.2024 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 no.1 to 3 seeking refund of Rs.17,74,080/- deposited with respondent no.1 along with interest thereon for purchase of residential apartment No.09201, on 20th Floor, Tower No.9, admeasuring super area of 1350 sq. ft at 'ATS Golf Meadows Lifestyle' (Registration Number

PBRERA-SAS79-PR0007) being developed by respondent no.1 at Dera Bassi, SAS Nagar, Mohali, Punjab,.

2. It is also prayed that the respondents be directed to pay the 'assured rental' to the tune of Rs.72,000/- as undertaken by the respondents vide letter dated 27.03.2017 as the same is due from August 2019 to March 2020.

3. The complainants have also made respondent no.2 and respondent no. 3 as necessary parties as they are the actual land owners where the towers are being developed by respondent no.1. Respondent no.4/HDFC Bank Limited is the lender bank from where the complainants availed the home loan facility.

4. The brief facts of the complaint are that vide application form dated 18.03.2017, the complainants booked/allotted residential apartment No.09201, Tower-9, 20th floor, admeasuring super area approx.1350 sq. ft. vide allotment letter dated 27.03.2017 in the project namely "ATS Golf Meadows Lifestyle-2" being developed by the respondents no.1 to 3 at Village Madhopur, Tehsil Derabassi, District Mohali, Punjab and paid booking amount of Rs.1,00,000/- vide cheque dated 08.03.2017 which was duly confirmed by these respondents vide their letter dated 20.03.2017.

5. It is further averred that the respondents informed the complainants vide their letter dated 27.03.2017 that they will pay 'assured monthly rental' of Rs.8,000/- for 36 months and a Buyer Agreement was also entered into on this date mentioning therein the payment plan. The total sale consideration for the said apartment was fixed as Rs.37,58,750/- inclusive of one car parking, basic sale price

of Rs.36,08,750/-, power backup charges of Rs.1,00,000/- and IFMS of Rs.50,000/-.

6. As per clause 14 of the Buyer Agreement, possession of the apartment was to be delivered within 42 months with a grace period of 6 months from the date of start of construction of the particular tower/building i.e. 28.02.2021 as the construction of Tower no. 9 had started on February, 2017 as per letter dated 13.02.2017 issued to one of the allottees of the same Tower. Thereafter the complainants made various payments on different dates as mentioned in this case totaling to R.17,74,080/- as per receipts attached. The respondents no.1 to 3 failed to construct Tower No. 9 till date, even they had stopped the construction in December, 2017 and re-commenced it in April 2021. But the complainants were never informed about the progress of construction of Tower 9. Thus, the complainants wished to withdraw from the project and seeking refund of their deposited amount of Rs.17,74,080/- paid to the respondents along with interest and also 'assured monthly rental' of Rs.72,000/- for the period from August 2019 to March 2020.

7. Upon notice, Shri Hardeep Saini, Advocate appeared for Shri J.P. Rana Advocate for respondents no.1 to 3 and submitted a detailed reply on their behalf. The learned Counsel for the respondent no.4/HDFC Bank Limited also submitted reply.

7.1 In the preliminary submissions, respondents no.1 to 3 admitted developing of project 'ATS Golf Meadows Lifestyle' at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab.

- 7.2 Entering of a buyer agreement with the complainants on 27.03.2017 for residential apartment No.9201, on 20th Floor, Tower No.9, admeasuring super area of 1350 sq. ft at 'ATS Golf Meadows Lifestyle' at Dera Bassi, SAS Nagar, Mohali, Punjab was also admitted.
- 7.3 Respondents while introducing about the Act of 2016 stated that they got the said project 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, has been declared to be "9 years" i.e by 01.09.2026.
- 7.4 Respondents have also relied upon Sections 18, 19, 31, 71, and 72 of the Act of 2016 in their reply.
- 7.5 The complainants have no cause of action to file the present complaint as the completion time for completion of project is "nine years" and this Authority has no jurisdiction to entertain and decide the complaint for the alleged violations mentioned therein.
- 7.6 It is also 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 agreements.
- 7.7 The respondents 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 also stressed that



the completion time of the project is nine years, thus, no cause of action arisen in favour of the complainants to seek refund and interest thereon at this stage and can seek this relief only after 01.09.2026.

7.8 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 of 2016, Rules and Regulations. It is contended that there is no provision in the Act of 2016, 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. The learned Counsel for these 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 of 2016 and Rules and Regulations.

7.9 The respondents while relying on the decision of "*M/s Shanti Conductors (P) Ltd. Anr. Vs. Assam State Electricity Board & Ors.*", contended that the provisions of the Act of 2016 cannot be read into the already executed contract and as the Legislation is always prospective. It is held by the Hon'ble Supreme court in 'Shanti's case' that liability to pay higher rate of interest not to operate retrospectively, rather the provisions are prospective in nature.

7.10 The respondents also relied upon Section 62 of the Contract Act wherein it has been held that if the parties to a contract agree to substitute a new contract, the original contract need not be performed.

7.11 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, wherein in Para 256 it was held as under:

"256. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(I)(C) he is not absolved of the liability under the agreement for sale."

7.12 The respondents have also referred Clause 35 of the buyer 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 of the Arbitration. It was therefore emphasized that only mechanism available to complainants is to invoke 'Dispute Resolution Mechanism', to be settled between the parties and accordingly the instant complaint before this Authority is not maintainable.

7.13 It is contended that Buyer Agreement was entered upon on 27.03.2017 and as per its Clause 14 possession of the residential apartment was to be handed over by February

2021. However, due to spread of Novel Coronavirus-19 and implementation of national wide lockdown in the entire country affecting the construction activities at large, it could not be handed over. The pandemic difficulties were also acknowledged by the Real Estate Regulatory Authorities and this Authority granted a 6 months' extension in completion of projects to the Real Estates Companies vide notification/circular dated 28.10.2020. Regarding the loan availed by the complainants from HDFC Bank Limited, it is stated that it is a matter of record.

On merits, the contents of preliminary objections and submissions have been reiterated.

7.14 The learned Counsel for the respondents stated that booking of Flat no.9201 on 20th floor in Tower No.9, admeasuring 1350 sq.ft. (Super Area), at "ATS Golf Meadows Lifestyle", Dera Bassi, SAS Nagar Mohali is a matter of record.

7.15 The respondents here again repeated the date of completion of the project as 01.09.2026, and stated that the respondents are however making efforts to deliver possession shortly or date may be slightly extended due to *force majeure* on account of Covid-19.

7.16 The respondents have paid Rs.2,16,000/- towards 'assured rental income' to the complainants as per the agreed terms and conditions.

7.17 It is contended that the complainants are not entitled for any refund and interest thereon and prayed that the complaint be dismissed.

8. The learned Counsel for the respondent no.4/HDFC Bank Limited also submitted reply. It is stated that the bank sanctioned a loan of Rs.30,00,000/- and partially disbursed an amount of Rs.12,39,759/- in two installments of Rs.12,17,259/- on 08.04.2017 and Rs.22,500/- on 10.04.2017 under the Loan Account No.624671249. A loan agreement dated 08.04.2017 was executed. A Tripartite Agreement was also executed on 31.03.2017 among complainants, respondent no.1, and respondent no.4/Housing Development Finance Corporation Limited (now HDFC Bank Limited).

9. It is further pleaded in pars 5-6 of parawise reply that *"... if any refund is allowed by the Hon'ble Tribunal (this Authority), it first to be refunded/paid to the answering respondent to be adjusted to the loan account of the complainants. The complainants have duly subrogated their rights unconditionally and irrevocably to refund the loan amount with interest as per the tripartite agreement.."* and also relied upon Clause 9 of it. The same is not being reproduced for the sake of brevity.

10. The learned Counsel for the complainants has not filed any rejoinder to the replies submitted by all the respondents.

11. The undersigned heard the arguments of the counsels on the stipulated date.

12. While repeating the contents of complaint, the learned Counsel for the complainants stated that they were allotted residential

apartment No.09201 on 20th floor in Tower No.9, admeasuring 1350 sq.ft. (Super Area), at "ATS Golf Meadows Lifestyle", Dera Bassi, SAS Nagar, Mohali, Punjab in the year 2017, vide Allotment letter dated 27.03.2017 and out of total sale consideration of Rs.37,58,750/- they have paid Rs.17,74,080/- to the respondents. It is further argued that as per Clause 14 of the Buyer Agreement dated 27.03.2017 possession of the residential apartment was to be given within 42 months with a grace period of 6 months from the date of actual start of the construction of a particular tower. As per letter dated 03.02.2017 issued to one of the allottees by the respondents the date of start of construction of tower/building No. 9 was February 2017, as such the date of possession was 28.02.2021. It is further argued by the learned Counsel for the complainants that despite payment of Rs.17,74,080/- to the respondents, possession has not been delivered to them till today as such they are not interested to stay in the project and wished to withdraw. Accordingly, they have filed the present complaint seeking refund of their money deposited with respondents no.1 to 3 along with interest thereon. To support their case, the learned Counsel for the complainants also annexed various documents including Booking Confirmation letter, Allotment Letter, Assured Return letter, Buyer Agreement and Tripartite Agreement executed among the complainants, respondent no.1 and respondent no.4.

13. On the other hand, the learned Counsel for the respondents no.1 to 3 reiterated the contents of their reply and stated that these may be considered as their arguments in matter under consideration. However, he added that if the complaint is going to be allowed, a sum

of Rs.2,16,000/- paid as assured rental income to the complainants be set off from the due amount payable by the respondent no.1.

14. The learned Counsel for the respondent no.4/HDFC Bank stated that the complainants availed a housing loan from their branch and executed loan and tripartite agreement. As per clause 9 of the Tripartite agreement, if any refund is allowed in favour of the complainants, respondent no.4 has the first right over the refund and prayed that the same be ordered accordingly as the complainants have subrogated their rights in favour of the bank.

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

16. 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. It is argued that as per para 3 of the Form 'B' submitted by the respondents in compliance of Section 4(2)(L)(C) of the Act of 2016, the completion time of the project has been mentioned to be '9 years' and pursuant thereto this Authority vide its Memo No.RERA/2017/13 dated 01.09.2017 granted Registration No.PBRERA-SAS79-PR0007. As such the completion time of the project is 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). Thus, this argument of the learned Counsel for the respondents has no merit and is accordingly rejected.

17. It is to be noted that perusal of Clause 14 – Time of Handing Over possession- of the Buyer Agreement dated 27.03.2017 clearly 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 in which registration for allotment is made....”*. As per letter dated 13.02.2017 issued by the respondent no.1 to one of the allottees of same Tower wherein it is clearly mentioned that the construction of tower/building had started on February 2017. Thus, it is clear from above clause and the letter that the possession of the residential apartment was to be handed over to the complainants within 48 months (42 months + 6 months’ grace period i.e. on or before 28.02.2021. It is further argued on behalf of the complainants that respondents no.1 to 3 failed to hand over the same till today.



18. Regarding the objection raised by the learned Counsel for the respondents about Covid-19, it is noted that this Authority has allowed an extension of six months to all the promoters for all the obligations under the Act of 2016 arisen after 15.03.2020. However, in the instant case the obligation to deliver possession was on 28.02.2021 thus the respondents even cannot claim the benefits of the Circular dated 13.05.2020 issued by this Authority. It is the consistent case of the complainants that despite lapse of sufficient time possession has not been handed over to them so far and they are not interested to stay in the project. It is the prayer of the complainants that the respondents be directed to refund the entire amount along with interest thereon. It is a matter of record that the complainants have been waiting for possession of their residential

apartment from a long period of time and still there is no commitment on behalf of the respondents as to the time by which the possession of the said residential apartment would actually be delivered to them.

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 27.03.2017. 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 any merit.

20. It is also a matter of record that the complainants have been waiting for possession of their flat since 28.02.2021 and still there is no timeframe declared by respondents. It is worth to note that the only relief sought by the complainants is for refund of their deposited amount of Rs.17,74,080/-, along with interest as per provisions of Section 18(1) of the Act of 2016 since the respondents failed to adhere to the terms and conditions of the Buyer Agreement dated 27.03.2017. It is established on record that possession of the flat was to be delivered to the complainants on 28.02.2021 however, same has not been delivered to the complainants. Thus, the delay in delivery of possession of the residential apartment by the respondents to the complainants compelled them to withdraw from the project. The complainants are within their right to seek refund of their deposited amount along with interest thereon, the relevant portion of Section 18(1) of the Act of 2016 which is reproduced below:

"18. (1) ..

(a) ...

(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" (emphasis supplied)

21. From the above facts, it is established on record that till date possession of apartment no.09201, on 20th Floor, of Tower no.9 situated in the project "ATS Golf Meadows Lifestyle" situated at village Madhopur, Tehsil Derabassi, District SAS Nagar, Mohali, Punjab has not been handed over to the complainants by the respondents as per letter dated 13.02.2017 issued to one of the allottees mentioning the date of start of construction to be February 2017, which compelled them to withdraw from the project. Thus, it is held that the complainants are entitled for the refund of their deposited amount as well as interest thereon.

22. As a result of the above discussion, this complaint is accordingly allowed and respondents no.1 to 3 are directed to refund the amount of Rs.17,74,080/-, 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, 2017 from the respective date of deposit till the date of actual refund.

23. However, it is made clear that a sum of Rs.2,16,000/- made by the respondents no.1 to 3 to the complainants towards 'assured rental income' be set off from the due amount to be released by these respondents.

24. It is further held that the first charge on the refund amount would be towards clearing the liability arising out of the Tripartite Agreement/Loan Agreement entered into among the complainants, respondent no.1 and respondent no.4/HDFC Bank Limited. Respondent no.1/ATS Estates Pvt. Ltd. is accordingly directed to clear the complainants' dues towards respondent no.4/HDFC Bank Limited in the first instance, and then refund the balance due amount to the complainants.

25. It is also further directed that the refund along with interest should be made by the respondent no.1/ATS Estates Pvt. Ltd. to the complainants within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 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 accordingly.

26. It may be noteworthy that in case compliance report is not submitted by the respondent no.1/ATS Estates Pvt. Ltd. after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act.

27. The complainants are also directed to submit report to this Authority that they have received the amount along with interest as directed in this order. Till then the said complainants shall have the

charge on the allotted residential apartment/unit No.09201, Tower No.9, 20th Floor. The complainants are directed to execute a cancellation deed on receipt of full payment of refund and interest thereon from the respondent no.1/ATS Estates Pvt. Ltd thereafter.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab

Rera Punjab