



PROCEEDINGS OF THE DAY		18
Day and Date	Monday and 25.07.2022	
Complaint No.	CR/1455/2019 Case titled as Satish Goyal & Richa Goyal V/s ATS Real Estate Builders Private Limited	
Complainant	Satish Goyal & Richa Goyal	
Represented through	Shri Mukul Kumar Sanwariya Advocate	
Respondent	ATS Real Estate Builders Private Limited	
Respondent Represented through	Shri M.K Dang Advocate	
Last date of hearings	03.06.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### Proceedings

The complaint has been received on 18.04.2019 and reply has been filed on 31.05.2019 by the respondent. The CRA for refund has been filed on 03.06.2022 by the complainant.

File has been received on transfer from Adjudicating Officer in view of the judgment dated 11.11.2021 passed by the Apex Court in the case bearing no. **SLP(Civil) No(s). 3711-3715 OF 2021) titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors.,** and wherein it was held that as matters regarding refund and interest under section 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the Adjudicating officer.

Succinct facts of the case as are as under:

S. No.	Heads	Information
1.	Name and location of the project	"ATS Marigold", Sector 89A, Gurugram
2.	Nature of the project	Residential Group Housing



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम  
नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

3.	Project area	11.125 acres
4.	DTCP License	87 of 2013 dated 11.10.2013 valid till 10.10.2017
	Name of the licensee	Dale Developers Private Limited & Gabino Developers Pvt. Ltd.
5.	HRERA registered/ not registered	<b>Registered vide no. 55 of 2017 dated 17.08.2017 valid till 31.07.2021</b>
6.	Application dated	01.04.2014 (A per page no. 22 of complaint)
7.	Allotment letter dated	02.01.2015 (As per page no. 22 of complaint)
8.	Date of execution of flat buyer's agreement	02.01.2015 (As per page no. 23 of complaint)
9.	Unit no.	4073 on 07 <sup>th</sup> floor, tower 04 (As per page no. 22 of complaint)
10.	Super Area	2150 sq. ft. (As per page no. 22 of complaint)
11.	Total consideration	BSP- Rs. 1,30,33,300/- TSC- Rs. 1,45,89,550/- (excluding tax) (As per page no. 53 of the complaint)
12.	Total amount paid by the complainants	Rs. 53,86,976/- (As per page no. 35 of reply)
13.	Possession clause	<b>Clause 6.2</b> <i>(The Developer shall endeavor to complete the construction of the Apartment <u>within 42 (forty two) months from the date of this Agreement, with the grace period of 6 (six) months ie. ("Completion Date")., subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein. The Company will send possession Notice and offer possession of the Apartment to</u></i>

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16





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		<i>the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies)..)</i>
14.	Due date of possession	02.01.2019 (Calculated from the date of the agreement i.e.; 02.01.2015 + grace period of 6 months) <b>Grace period is allowed</b>
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered
17.	Letter/email sent before filing of present complaint seeking refund	10.11.2015 (Followed by 04.04.2016, 02.06.2016) (As per page no. 56 of complaint)
18.	<b>Demand letter</b> & reminders	<b>27.01.2018,</b> 04.03.2018, 04.04.2018, 07.05.2018, 15.06.2018 (As per page no. 37-40 of complaint)
19.	Pre-cancellation letter dated	11.07.2018 (As per page no. 41 of reply)
20.	Cancellation letter dated	05.09.2018 (As per page no. 43 of reply)

**Relief sought by complainant:**

- 1. Direct the respondent to return payment made in lieu of unit/apartment till date along with the prescribed rate of interest from the date of first payment till realization as per the provisions of section 18(1) and 19(4) of the RERA Act.**

The complainants booked the subject unit on 01.04.2014 under construction linked plan. The complainants were allotted unit in the project of the respondent on 02.01.2015 and they have paid an amount of Rs. 53,86,976/- against total consideration of Rs. 1,30,33,300/- constituting 41.33% of total consideration. The complainant vide email dated 10.11.2015 followed by reminder dated 04.04.2016 & 02.06.2019, requested the respondent that due to financial hardship faced by the complainants, they want to withdraw from the project. In response, the





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CA 11455/2019

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respondent vide email dated 29.07.2016 stated that the process will take few months.

Despite request of the complainant to withdraw from the project, the respondent sent a demand letter dated 27.01.2018 payable on construction of top floor, followed by various reminders dated 04.03.2018, 04.04.2018, 07.05.2018, 15.06.2018 and final cancellation letter dated 05.09.2018 for a default of amount of Rs. 74,91,421.

In the present case, it is pertinent to note that the complainant has already raised his plea to withdraw from the project way back in 2015 and they did not come forward to pay any further demand showing their willingness to withdraw from the project.

Therefore, in view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 9.80% p.a. on the refundable amount, from the date of request of surrender till the date of realization of payment.

2. ***To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for willful default committed by them.***
3. ***To impose penalty upon the respondents as per the provisions of Section 61 of RERA Act for contravention of Sec. 12, Sec.13, Sec. 14, Sec. 15 and Sec. 16 of RERA Act.***
4. ***To direct the respondents to pay penalty upto 10% of project cost to the Complainants under Sec. 59 of RERA, Act, 2016.***
5. ***To direct the respondents to refund the amount collected from the Complainants in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017.***
6. ***To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act, 2016 to be read with HRERA Rules, 2017.***
7. ***To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.***

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
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For the said reliefs, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

Matter stands disposed of. Detailed order will follow. File be consigned to the registry.

V.1-S  
Vijay Kumar Goyal  
Member

  
Dr. KK Khandelwal  
Chairman  
25.07.2022