

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 832 of 2021
First date of hearing: 06.04.2021
Date of decision : 05.07.2024

1. Ritu Maheshwari
2. Sumit Maheshwari
Both RR/o: - 14-FF, K6.2, Sector-83, Gurgaon,
Haryana - 122018

Complainants

Versus

M/s ATS Realworth Pvt. Ltd.
Regd. Office at: 711/92, Deepali Hehru Place,
New Delhi-110019

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Nishant Jain (Advocate)
Ms. Simrat Singh (Proxy Counsel)

Complainants
Respondent

ORDER

1. The present complaint dated 23.02.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"ATS Grandstand Phase I" at sector - 99A, Gurugram
2.	Nature of the project	Residential Project
3.	Project area	11.5875 acres
4.	DTCP license no. and validity status	37 of 2013 dated 03.06.2013 valid upto 02.06.2026
5.	RERA Registered/ not registered	Registered 06 of 2018 dated 02.01.2018 valid upto 8 years from the date of EC
6.	Unit no.	3143 [page no. 17 of complaint]
7.	Unit area admeasuring	1118 sq. ft. [page no. 17 of complaint]
8.	New unit no.	8063, Tower 8 [page no. 29 of complaint]
9.	Unit area admeasuring	1750 sq. ft. [page no. 29 of complaint]
10.	Application for allotment	12.01.2020 [page no. 12 of complaint]

11.	Welcome Letter	22.01.2020 [page no. 32 of complaint]
12.	BBA	Not executed
13.	Possession clause	Not mentioned
14.	Due date of possession	Not known
15.	Total sale consideration	Rs.91,94,509/- [as per payment plan on page no. 31 of complaint]
16.	Amount paid by the complainants	Rs. 18,38,900/- [as alleged by both parties in complaint]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Email by complainants to refund the entire amount	20.08.2020 [page no. 41 of complaint]

B. Facts of the complaint

3. The complainants have made the following submissions: -
4. That due to high pitched offers and assurance to provide luxury apartments at a prime location at a very attractive price, complainants paid Rs. 9,10,694/- on 12.01.2020 and booked a unit.
5. That the complainants were interest to book their apartment in tower 8 of the project and same was offered by the respondent to the complainants for booking, but while signing of the booking papers, respondent mentioned some different unit no. in tower 3 and it was intimated by the respondent that RERA approval for tower 8 is in



process. Also assurances were given to the complainants that a provisional allotment will be made and the final allotment will be shifted to tower 8 by Feb 2020. The complainants have requested the respondent several times to update the status of Tower 8 but the respondent has failed to update the complainants till date.

6. That as per the application form signed by the complainants, respondent offered apartment no. 3143, tower 3, however a note was given at the end of the application form regarding shifting of unit to tower 8 at same price.
7. That subsequent to signing of the application form a welcome letter dated 22.01.2020 was issued by the respondents on 24.01.2020 to the complainants.
8. That the respondent again approached the complainants and demanded another payment to the tune of Rs. 9,10,964/- from the complainants. The complainants being caught in the trap laid by the respondent were forced to make further payments on 15.02.2020 through NEFT for Rs. 9,10,694/-.
9. That the respondent has not executed any written agreement with the complainants till date and has extracted a total of Rs. 18,21,399/- from the complainants. The complainants have paid an additional amount towards TDS to the relevant authority to the tune of RS. 17,513.36/-.
10. That the respondent had extracted an amount of more than 10% without executing any agreement to sale which is against the prescribed law and is in violation of the provisions of The Real Estate (Regulation And Development) Act, 2017.
11. That complainants lost faith in the respondent company and made request for refund of the amount vide E-mail dated 20.08.2020. However, the respondent company has miserably failed to refund the



money paid by the complainants. The complainants have been regularly approaching the respondent and requesting the details of the refund however, the respondent with malafide intentions has stopped all the communications with the complainants.

12. That the respondent has already enjoyed the money of complainants without making a firm offer of allotment and rather extracted moneys from them on the pretext of making allotment in tower 8 of the project.

13. That the cause of action for filing of the present complaint arose when the respondent company approached the complainants to buy a flat in their project and the complainants wanted a unit in tower 8 however, the respondent offered allotment in tower 3 and promised to change the same in tower 8 by February, 2020 and failed to do so. Further despite taking 20% of the cost of the apartment, respondent did not sign an apartment buyer agreement. Further the cause of action arose when the complainants made a request to refund their amounts paid but the respondent has failed to return the hard earned money of the complainants and stopped all communications. The cause of action is continuing one and still subsisting hence, the present complaint.

C. Relief sought by the complainants:

14. The complainants have sought following relief(s).

- i. Direct the respondent to refund a sum of Rs. 18,21,388/- along with interest @18% per annum from the date of deposit till the date of its refund.
- ii. Direct the respondent to refund a sum of Rs. 17,513/- paid in lieu of TDS along with interest @ 18% p. a. from the date of payment till date of refund.



- iii. Direct the respondent to pay compensation of Rs. 10,00,000/- to the complainants for causing mental agony, undue harassment and financial loss.
15. The respondent/promoter put in appearance through its Advocate and marked attendance on 07.07.2023, 27.10.2023 respectively. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, in view of order dated 27.10.2023, the defence of the respondent was struck off.
16. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants.

D. Jurisdiction of the authority

17. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

18. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject-matter jurisdiction

19. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

20. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

21. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of

Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

22. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainants.

- i. Direct the respondent to refund a sum of Rs. 18,21,388/- along with interest @18% per annum from the date of deposit till the date of its refund.
- ii. Direct the respondent to refund a sum of Rs. 17,513/- paid in lieu of TDS along with interest @ 18% p. a. from the date of payment till date of refund.

23. In the present complaint, the complainants intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

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."

(Emphasis supplied)

24. However, as no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:**

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

25. Accordingly, the due date of possession is calculated as 3 years from the date of allotment i.e., 12.01.2020. Therefore, the due date of possession comes out to be 12.01.2023.



26. The complainants booked a unit in the project of the respondent namely, ATS Grandstand phase I situated at sector-99A, Gurugram. The complainants booked a unit bearing no. 8063, admeasuring 1750 sq. ft., Tower No. 8 vide application letter dated 12.01.2020. On 20.08.2020 complainants surrendered the unit vide email and requested for full refund of amount paid by them.
27. In the present matter no BBA has been executed so the due date comes out to be 12.01.2023. However, the complainants has already withdrawn from the project by sending email dated 20.08.2020 and sought refund of the paid-up amount before the due date of possession i.e., 12.01.2023. So, in such a situation, the complainants withdrew from the project even prior to the due date. Thus, they are not entitled to refund of the complete amount but only after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

28. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 18,38,900/- after deducting 10% of the sale consideration being earnest money



along with an interest @10.95% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 20.08.2020 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

iii. **Direct the respondent to pay compensation of Rs. 10,00,000/- to the complainants for causing mental agony, undue harassment and financial loss.**

29. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority


30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):



- i. The respondent/promoter is directed to refund the paid-up amount of Rs.18,38,900/- after deducting 10% of the sale consideration being earnest money along with an interest @10.95% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 20.08.2020 till its realization.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

31. Complaint stands disposed of.

32. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2024