

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

Complaint no.	:	5242 of 2023
Date of Filing:		08.11.2023
Date of Decision:		04.07.2025

1. Neha Tayal
2. Ashok Verma

Both R/O: F-1004, BPTP Freedom Park Life,
Sector-57, Gurugram

Complainants

Versus

M/s ATS Real Estate Builders Pvt. Ltd.
Regd. office: 711/92, Deepali, Nehru Place,
New Delhi-110019

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sushil Yadav
Ms. Shivani Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint 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 allottees 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:

Sr. no.	Particulars	Details
1.	Name of the project	ATS Marigold, Sector 89A, Gurugram, Haryana
2.	Project area	11.125 acres
3.	Nature of the project	Residential
4.	DTCP license no.	87 of 2013 dated 11.10.2013
5.	HRERA registered/ not registered	55 of 2017 dated 17.08.2017 valid upto 29.02.2024 (extended vide extension no. 07 of 2019)
6.	Unit no.	1013, 1 st floor, tower 1 [page 13 of complaint]
7.	Unit measuring (super area)	1340 sq. ft.+ 210 sq. ft. terrace area [page 13 of complaint]
8.	Date of agreement to sell	28.10.2017 [page 12 of complaint]
9.	Possession clause	7. POSSESSION OF THE APARTMENT FOR RESIDENATIL USAGE: 7.1

		<p><i>The Promoter assures to handover possession of the Apartment for Residential usage along with Car Parking on or before 31st August 2019, unless there is delay due to "force majeure", court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. If, the completion of the project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of the possession of the Apartment for Residential usage.</i></p> <p>(Emphasis supplied)</p>
10.	Due date of possession	<p>31.08.2019</p> <p>(as per possession clause)</p>
11.	Total consideration as per payment plan annexed with the agreement at page 34 of complaint	<p>Rs.1,36,04,476/-</p>
12.	Total consideration as per SOA annexed with offer of possession at page 41 of complaint	<p>Rs.1,36,31,198/-</p>
13.	Total amount paid by the complainants as per SOA annexed with offer of possession at page 41 of complaint	<p>Rs.1,13,55,112/-</p>
14.	Offer for fit out	<p>11.10.2022</p> <p>(page no. 22 of reply)</p>



15. Occupation certificate	16.06.2023 [page 35 of reply]
16. Offer of possession	20.06.2023 [page 38 of complaint]
17. Reminder for payment	06.10.2023 (page no. 40 of reply)
18. Termination of allotment by respondent	02.11.2023 (page no. 41 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "ATS Marigold", situated at sector 89A, Gurgaon promising various advantages. Relying on the promise and undertakings given by the respondent complainants booked an apartment measuring 2150 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs 1,36,31,198/-.
 - II. That the flat buyer's agreement was executed on dated 28.10.2017 and as per the said agreement the respondent had allotted a unit bearing no. 1013, type B, on 1st floor, in 1 tower having super area of 2150 sq. ft. to the complainants. As per clause 7.1 of the agreement, the respondent had agreed to deliver the possession of the flat on or before 31st August 2019.
 - III. That the complainants used to telephonically ask the respondent about the progress of the project and the respondent always gave false

impression that the work is going in full mode and accordingly asked for the payments which the complainants gave on time and the complainants when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainants. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants.

- IV. That despite receiving more than 95% approximately payments on time for all the demands raised by the respondent, it has failed to deliver the possession of the allotted flat to the complainants within stipulated period.
- V. That on dated 20.06.2023 the respondent sent the offer of possession but when the complainants visited the flat, the flat and entire project complex was not in a habitable condition which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently
- VI. That due to this omission on the part of the respondent the complainants has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the flat on time.
- VII. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainants from the promise date of possession till the flat is actually delivered to the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- (i) Direct the respondent to handover possession of the unit to the complainants.
 - (ii) Direct the respondent to pay interest for every month of delay at prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. सत्यमेव जयते
 - II. That the complainants have no locus standi to file the present complaint.
 - III. That the complainants, after checking the veracity of the project namely, 'ATS Marigold', Sector 89A, Gurugram had applied for allotment of an apartment vide booking application form dated 30.09.2017. The complainants had agreed to be bound by the terms and conditions of the booking application form.
 - IV. That based on the said application, respondent vide its allotment offer letter dated 30.09.2017 allotted to the complainants an apartment no. 1013 on the 1st floor of tower no. 1 having super built up area of 1340 sq. ft. for a sale consideration of Rs. 1,36,04,476/-. The complainants signed and executed agreement for sale on 28.10.2017 and the complainants agreed to be bound by the terms and conditions contained therein.



- V. That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan. The complainants made part-payment out of the total sale consideration and were bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
- VI. That after completing the construction, the respondent vide its letter dated 11.10.2022, intimated the complainants that their unit is ready for carrying fit-out works and requested them to complete the interior/fit-out work within 3 months.
- VII. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 7.1 of the agreement for sale the promoter assures to hand over possession of the apartment for residential usage along with car parking (if applicable), on or before 31st August 2019, unless there is delay due to "force majeure", court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project.
- VIII. That after the completion of the construction, the respondent had applied for the grant of the occupation certificate vide application dated 26.08.2022. After scrutiny, the concerned authorities granted the occupation certificate for the tower in question only on 16.06.2023 and the respondent offered the possession to the complainants on 20.06.2023.
- IX. That the respondent has strictly abided by the terms and conditions of the duly executed agreement for sale. On the other hand, even though



the complainants had been called upon to take the possession of their unit after payment of the amount due to the respondent and fulfillment of the requisite formalities yet the complainants were intentionally not coming forward to do so. The complainants were called upon several times to pay the outstanding dues and also to complete the requisite formalities. However, the complainants miserably failed to do so. Left with no other option, the respondent was constrained to send final reminder dated 06.10.2023 to the complainants.

- X. That timely payment of installments within the agreed time schedule was the essence of allotment. On account of non-fulfillment of the contractual obligations by the complainants despite several opportunities extended by the respondent, the allotment of the complainants was cancelled and the earnest money was forfeited vide termination Letter dated 02.11.2023. Thus, the complainants are now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment.
- XI. That the complainants had earlier filed a baseless and false complaint against the respondent before a different forum in order to unnecessarily harass and pressurize the respondent. The complainants are real estate investors who had booked the unit in question with a view to earn quick profit in a short period. However, their calculations went wrong on account of slump in the real estate market and the complainants did not possess sufficient funds to honour their commitments.
- XII. That since the allotment of the unit stands terminated and cancelled, the complainants are not left with any right, title or interest in the previously allotted unit. Therefore, the complainants are not at all



entitled to the reliefs sought in the present complaint. The complaint being an abuse of the process of law is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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.

E.II Subject-matter jurisdiction

10. 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.

11. 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.

F. Findings on the relief sought by the complainants:

- (i) Direct the respondent to handover possession of the unit to the complainants.
 - (ii) Direct the respondent to pay interest for every month of delay at prescribed rate of interest.
12. The above mentioned relief no. (i) and (ii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
13. In the present complaint, the complainants booked a unit in the project of respondent namely, ATS marigold, situated at sector 89A, Gurugram. The complainants were allotted a unit bearing no. 1013, 1st floor in Tower 1 admeasuring 1340 sq. ft. The agreement to sell was executed between the complainants and the respondent on 28.10.2017 for the total sale consideration of was Rs. 1,36,04,476/- and the complainants has made a payment of Rs. 1,13,55,112/- against the same in all. As per clause 7 of the agreement, the respondent was required to hand over possession of the unit on or before 31st August 2019. Therefore, the due date of possession comes out to be 31.08.2019. The respondent has

obtained the occupation certificate in respect of the allotted unit of the complainants on 16.06.2023 and thereafter, has offered the possession on 20.06.2023.

14. The complainants in the present complaint is seeking delay possession charges as well as possession of the unit and stated that the respondent has delayed in handing over the possession of the unit.
15. The plea of the respondent is otherwise and stated that the respondent has already cancelled the unit allotted to the complainants on 02.11.2023. The demand were raised as per payment plan annexed with agreement to sell dated 28.10.2017 and the complainants have made payment of Rs. 1,13,55,112/- . However, reminder letter was issued but despite repeated follow ups the complainants failed to act further and comply with their contractual obligations and therefore the unit of the complainants was finally terminated vide letter dated 02.11.2023.

Now the question before the authority is whether the cancellation issued vide letter dated 02.11.2023 is valid or not.

16. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the agreement to sell was executed between the complainants and respondent on 28.10.2017. The sale consideration of the unit was Rs.1,36,04,476/- and the complainants has made a payment of Rs.1,13,55,112/- against the same in all. As per the payment plan annexed as Schedule F in the agreement dated 28.10.2017 at page 35 of the complaint, the complainants were required to make final payment at the time of possession. The respondent has obtained the occupation certificate (OC) from the competent authority on

16.06.2023, which conclusively establishes that construction of the project has been duly completed. Thereafter the respondent has offered the possession of the unit on 20.06.2023.

17. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the OC, it was incumbent upon the complainants to honour the demand and make payment as per the agreed terms. The failure to do so amounts to a breach of contractual obligations.
18. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sell dated 28.10.2017. The respondent has offered the possession of the unit on 20.06.2023 along with a demand to be payable at the time of possession and subsequently issued reminder on 06.10.2023 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid reminder, the complainants have failed to take possession and clearing the outstanding dues. Therefore, the respondent cancelled the unit on 02.11.2023.
19. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainants is hereby declined as the complainants-allottee have violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainants after certain deductions as prescribed under law.
20. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1***

SCR 928 and Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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."

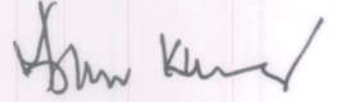
21. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate

Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainants after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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, from the date of termination/cancellation 02.11.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

22. 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):
- The respondent/builder is directed to refund the deposited amount of Rs.1,13,55,112/- after deducting 10% of the sale consideration along with an interest @11.10% on such refundable amount, from the termination/cancellation 02.11.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
 - 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.

23. Complaint as well as applications, if any, stands disposed off accordingly.
24. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.07.2025



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GURUGRAM