

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

Complaint no.: 5882 of 2023  
Date of filing: 26.12.2023  
Order pronounced on: 08.07.2025

Chandra Kumar Bubna

**R/o:-** 124/5, central avenue, Sainik Farms, New  
Delhi

**Complainant**

Versus

1. M/s ATS Real Estate Builders Pvt. Ltd.

**Regd. Office at:-** ATS Tower, plot no. 16, sector  
135, Noida-201305

**Respondent**

**CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

**Chairperson  
Member**

**APPEARANCE:**

Shri Yash Gupta (Advocate)

Shri Shivani Dang (Advocate)

Complainant  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/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 provision of the Act or the Rules and regulations made thereunder 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:

S. N.	Particulars	Details
1.	Name and location of the project	"ATS Marigold" at Sector 89A, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	RERA registration	55 of 2017 dated 17.08.2017
4.	Unit no.	2161, 16 <sup>th</sup> floor, in Tower- 2 (Page no. 18 of the complaint)
5.	Unit area admeasuring	1750 sq. ft. (Super built-up area)
6.	Allotment letter dated	05.09.2014 (Page 18 of complaint)
7.	Buyer agreement	06.01.2015 (Page no. 17 of the complaint)
8.	Possession clause	<i>6.2 The Developer shall endeavour to complete the construction of the Apartment within 42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months i.e. ("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 the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).</i>  (Page no. 28 of the complaint)
9.	Due date of possession	06.01.2019 (Note: - due date of possession can be calculated from the date of agreement i.e., 06.01.2015) <b>A grace period 6 months is allowed being unconditional.</b>

10.	Sale consideration	Rs. 1,19,06,250/- (Page 47 of reply)
11.	Amount paid by the complainant	Rs.1,12,32,277/- (Page 15 of complaint)
12.	Occupation certificate	16.06.2023 (Page 27 of reply)
13.	Offer of possession	20.06.2023 (Page 30 of complaint)
14.	Reminders/ Demand letter dated	27.07.2023, 06.10.2023
15.	Termination letter dated	07.11.2023 (Page 36 of reply)
16.	Third -party rights created on	05.12.2023 (As alleged by respondent at page 08 of reply)

**B. Facts of the complaint.**

3. The complainant has made the following submissions in the complaint:
  - a. It is pertinent to mention herein, that on such false promises and putting forth a rosy picture by the representatives/officials of Respondent Company, the Complainant got induced and trusted their words and decided to book a unit with total sale consideration of ₹1,26,49,338/- in the Respondent Company' project under the name and style of "ATS MARIGOLD" situated at village Harsaru, Sector 89A, Gurugram, Haryana.
  - b. That pursuant to the booking a unit in the Respondent Company' project under the name and style of "ATS MARIGOLD" situated at village Harsaru, Sector 89A, Gurugram, Haryana, a unit bearing no. 2161 on 16th floor of Tower no. 2 having Super Built up Area of 163 square meter, equivalent to 1750 square feet, which includes a Built Up Area of 137.50 square meter, equivalent to 1480 square feet along with easement, privileges, rights, benefits with proportionate undivided interest in the Common Areas and

facilities and Limited Common Areas Facilities necessary for the adequate use and enjoyment thereof along with exclusive right to use and occupy 2 nos. of car parking space in the said Project, was allotted to the Complainant vide provisional allotment.

- c. It pertinent to mention herein, an Apartment Buyer Agreement was also signed between the Complainant and the Respondent on 06.01.2015, pertaining to the residential Apartment bearing no. 2161, on the 16th floor of Tower no. 2 of the said project for a total consideration of Rs. 1,26,49,338/-.
- d. It is also pertinent to mention herein that as per clause 6.2 of the said agreement Respondent Company was required to offer and handover the possession of the Apartment within 42 months from the date of signing of the said agreement and therefore as per the terms of agreement, the due date for handing over the Possession of the Apartment was on 06.01.2019.
- e. It is further essential to submit that Respondent Company raised various demands from time to time, demanding payment of the part of the consideration amount and the Complainant, in bona fide manner and belief, till date has already made a payment of ₹1,12,32,277/-.
- f. That despite making payment of more than 90% of consideration amount, the Respondent Company as promised neither offered possession of the Apartment nor gave any information about the completion of the Project, which is direct contravention of the provisions of the RERA.
- g. Furthermore, the Respondent Company arbitrarily and illegally issued a cancellation notice dated 07.11.2023 notwithstanding the fact that the Complainant has already made payment to the tune of

₹1,12,32,277/-. That the Complainant immediately wrote an e-mail to the Respondent Company requesting them to withdraw the illegal letter dated 07.11.2023 as the said letter was passed in contravention of the RERA Laws and Judgements passed by this Hon'ble Authority from time to time. That the Complainant also sent a legal notice through his counsel to the Respondent on 21.11.2023 however the same was never replied with.

- h. It is also necessary to mention that no construction work has been going in the said project and the project is on halt for years and when Complainant asked for status of ground construction work no reply was given by the Respondent Company. Therefore, Complainant most respectfully prays to this Hon'ble Authority to allow the present Complaint and set aside the illegal cancellation letter dated 07.11.2023 and further direct the Respondent Company to pay delay penalty amount of Rs.51,00,000/- along with interest.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  - a. Set aside the illegal cancellation letter dated 07.11.2023.
  - b. Direct the Respondent Company to pay delay penalty amount of ₹51,00,000/- along with interest at the rate of 18% p.a.
  - c. Award a sum of Rs. 2,00,000/- as litigation costs for this Complaint to Complainant.
  - d. Award a sum of Rs. 5,00,000/- towards mental harassment of the Complainant to the Complainant.
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:
  - a. That the complainant, 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 04.07.2013. The complainant had agreed to be bound by the terms and conditions of the Booking Application Form. That based on the said Application, respondent vide its Allotment Offer Letter dated 05.09.2014 allotted to the complainant an apartment no. 2161 on the 16th floor of tower no. 2 having super built-up area of 1750 sq. ft. for a sale consideration of Rs. 1,23,82,112/-.
  - b. 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.
  - c. 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.
  - d. 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.

- e. That from the aforesaid terms of the Buyer's Agreement, it is evident that the construction was to be completed within a period of 42 months from the date of the agreement and the same was subject to the occurrence of force majeure conditions. The possession of the unit was to be handed over to the complainant only after the receipt of the Occupation Certificate from the concerned authorities. It is pertinent to mention here that the respondent has already completed the construction of the tower in which the unit allotted to the complainant is located.
- f. 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 complainant on 20.06.2023. As on date, the complainant is still liable to pay a sum of Rs. 14,17,061/- including interest for delayed period.
- g. That the complainant had been called upon to take the possession of his unit after payment of the amount due to the respondent and fulfilment of the requisite formalities yet the complainant was intentionally not coming forward to do so. The complainant was called upon several times to pay the outstanding dues and also to complete the requisite formalities. However, the complainant miserably failed to do so. It is pertinent to mention here that the respondent issued reminders dated 27.07.2023, 10.08.2023 and final notice dated 06.10.2023 to the complainant but the balance payment was not made by the complainant.

- h. That it is pertinent to mention here that timely payment of instalments within the agreed time schedule was the essence of allotment. On account of non-fulfilment of the contractual obligations by the complainant despite several opportunities extended by the respondent, the allotment of the complainant was cancelled and the earnest money was forfeited vide termination Letter dated 07.11.2023. Thus, the complainant is now left with no right, claim, lien or interest whatsoever in respect of the said booking/allotment. The respondent is ready to refund the amount of the complainant as per the agreed terms and conditions of allotment of Builder Buyer's Agreement.
- i. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, his calculations went wrong on account of slump in the real estate market and the complainant did not possess sufficient funds to honour his commitments.
- j. That since the allotment of the unit stands terminated and cancelled, the complainant is not left with any right, title or interest in the previously allotted unit. Therefore, the complainant is 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 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 parties.

**E. Jurisdiction of the Authority:**

8. The authority observes that it 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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)(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.**

**F.I. Set aside the illegal cancellation letter dated 07.11.2023.**

**F.II. Direct the Respondent Company to pay delay penalty amount of ₹51,00,000/- along with interest at the rate of 18% p.a.**

12. The complainants were allotted a unit in the project of respondent "ATS Marigold" in at sector 89A, Gurgaon vide allotment letter dated 05.09.2014 for a total sum of ₹1,19,06,250/-. The buyer's agreement was executed on 06.01.2015 and the complainants started paying the amount due against the allotted unit and paid a total sum of ₹1,12,32,277/-.
13. The respondent offered the possession of the subject unit on 20.06.2023 after receiving occupation certificate from the competent Authority and raised demand for due instalment which was due as per the payment plan opted by the complainant. After issuing reminders for payment of outstanding dues dated 27.07.2023 & 06.10.2023, the respondent finally terminated the allotment of the unit on 07.11.2023 on failure of payment of outstanding instalments.
14. The complainants-allottees are under an obligation to make payment of outstanding dues as agreed between the parties vide agreement dated 06.01.2015. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement to take an apartment, plot or building under section 13 is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainants-allottees have not complied with the terms of the agreement as the complainant despite issuance of several reminders by the respondent. The respondent obtained the occupation certificate on 16.06.2023, and an offer of possession was made on 20.06.2023. The termination of the unit was subsequently affected due to

the complainant's default in failing to pay the outstanding dues associated with the unit. Consequently, the cancellation of the unit, dated 07.11.2023, is hereby stands valid.

15. The respondent in its reply contended that as the relief sought by the complainant in the complaint is not maintainable due to cancellation of the unit on 07.11.2023, however, no amount has been refunded till date.
16. Now when the complainants approached the Authority to seek delay possession charges and possession, it is observed that the unit was terminated due to default on part of the complainants. Since the third-party rights pertaining to the unit has already been created on 05.12.2023, the Authority is of view that a promoter cannot retain the amount paid by the complainant after the unit got terminated and the complainants herein are entitled for refund after deduction of earnest money under clause 10.4 (i) of BBA, the respondent-builder is entitled to forfeit the earnest money of the total sale consideration. The relevant portion of the clause is reproduced herein below:

*"The Developer shall, out of the entire amounts paid by the buyer to the Developer till cancellation date, forfeit the entire Earnest Money and any other dues payable by the Buyer including interest on delayed payments as specified in this Agreement"*

17. 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 Urs. 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 a 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."*

18. 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, 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 i.e., ₹1,12,32,277/- 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 cancellation i.e., 07.11.2023 till the actual date of refund of the amount within timelines given in rule 16 of the Haryana Rules 2017 *ibid*.

**F.III. Award a sum of Rs. 2,00,000/- as litigation costs for this Complaint to Complainant.**

**F.IV. Award a sum of Rs. 5,00,000/- towards mental harassment of the Complainant to the Complainant.**

19. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation 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 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.

**G. Directions of the authority**


20. 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):
- a. The respondent is directed to refund the paid-up amount of ₹1,12,32,277/- after deducting the earnest money which shall not exceed the 10% of the sale consideration of ₹1,19,06,250/- along with the interest at the prescribed rate i.e., 11.10% on the such balance amount from date of cancellation i.e., 07.11.2023 till actual date of realization.

b. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Date: 08.07.2025**

