

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

Complaint no.: 7318 of 2022
Date of filing: 08.12.2022
Order pronounced on: 05.08.2025

Tanuj Shori through its authorized representative Mr.
Piyush Bothra

R/o:- Hno. G-30, 1st floor, Vikaspuri, New Delhi

Complainant

Versus

1. M/s ATS Infrastructure Ltd.
Regd. Office at: -Deepali Nehru Place, New Delhi-
110019
2. M/s Chintels India Private Ltd.
Regd. Office at: -A-11, Kailash Colony, New Delhi-
110004
3. M/s Urmitha Infrastructure Development LLP.
Regd. Office at: -Deepali Nehru Place, New Delhi-
110019

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri Hemant Kumar Yadav (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 of the project	"Ats Kocoon", Sector-109, Gurugram, Haryana.
2.	Nature of the project	Residential Project
3.	RERA Registered/ not registered	Not Registered
4.	Allotment Letter by Chintels Pvt. Ltd.	09.05.2012 (Page 40 of the complaint)
5.	Flat no.	T1-1223 22 ND Floor tower 1 (Page no. 20 of reply)
6.	Unit admeasuring	Super Area- 2095 sq. ft. (Page no. 21 of complaint)
7.	Indemnity cum undertaking for carrying out interior fit out where it is stated the handover is given to the complainant dated	08.10.2021 [page 47 of reply]
8.	Email by respondent apologizing for delay in handing over the possession of the unit	23.08.2022 [pg. 74 of complaint]
9.	Flat Buyer Agreement executed between the complainant and M/s Umritha Infrastructure development LLP	08.06.2012 [Page no. 17 of reply]
10.	Possession clause	11. Time of handing over possession Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, delivered by the Company to the Allottee within 36

		<i>months (three years) with a grace period of six months (hereinafter referred to as "the Stipulated: Date") from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, subject always to timely payment of all charges including the Basic Sale Price* Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.</i>
11.	Due date of delivery of possession	08.12.2015
12.	Total sale consideration	Rs. 1,27,57,990/- (as per BBA on page 21 of reply)
13.	Total amount paid by the complainant	Rs. 1,33,18,390/- (as alleged by the complainant in the facts)
Receipts are issued by Chintels India Ltd.		
14.	Occupation certificate	Cannot be ascertained
15.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - a. That Respondents through various social media platforms had approached Complainant with a proposal to sell flats in one project namely ATS KOCOON (hereinafter referred to as the 'said project') and stated and represented that they have already owned, seized and possessed the said project Land and are entitled to develop and

construct and further also have a right to sell and deal with the said project.

- b. That on basis of assurances and representations of respondents and continuous follow up by team members, complainant believing in the assurances of respondents and agreed to purchase the said flat in the said project for a total sale consideration amount of Rs.1,27,57,990/- and thereby made several payments from time to time as per the demands raised by the Respondent to the tune of Rs.1,33,18,390/- towards the entire sale consideration amount inclusive of the loan amount of Rs.1 Crore that was released by the India bulls Housing Finance Ltd. directly in the account of Respondent. Further, Respondent No. 2 allotted a flat bearing No. T1-1223 admeasuring 2095 Sq. ft., in ATS KOCOON, Sector 109, Gurgaon vide allotment letter dated 09.05.2012.
- c. That after allotment of the abovementioned Unit Agreement to Sale and the tripartite Agreement dated 28.05.2012 was also executed between the complainant and the Respondent No. 2 but the copy of the same was never provided to the complainant till date despite several follow ups and reminders. The complainant made various request to the officials of the respondent to provide all the documents related to the property in question to the complainant, but the all the efforts of the complainant has gone in vain.
- d. That on 30.09.2021, complainant received an email from the officials of the Respondent no. 2 and it is stated in the said email list of documents was mentioned for the handover and registration of the documents before the registrar Office and further, Respondent No. 2 also asked for the Registration Charges of Rs. 8,31,200/-. That in view of the said email, complainant transferred the said amount

and also share the transaction details with the Respondent no. 05 vide an email dated 18.11.2021. It is pertinent to mention here that during the said period of time Authorized representative of the complainant visited the Flat and came to know that unit is still under construction and on this complainant approached the Officials of respondent no. 1&2 and raised the concern that Unit is still under construction then how can they register the same before the Registrar office when there are no tiles, Bathroom fittings, Electrical connections, paint etc.

- e. That the complainant received an email on dated 7.08.2022 from the Respondent asking for the Monthly maintenance charges of Rs. 26,078/- on which representative of the complainant took an objection and asked for the documents and further raised the concern in respect to the unethical and unfair trade practice and further maintenance charges are completely arbitrary, illegal and unlawful because the Respondents failed to handover the unit.
- f. That as per the agreed terms and conditions and agreement to sale, which was executed between the respondent and complainant, respondents promised to deliver the peaceful habitable possession of the said flat to on or before November 2021 but till date the unit allotted to the complainant is not ready and further developer failed to handover the possession of the said unit till date despite several request, emails, letters, reminders and follow ups.
- g. That till date complainant has written several mails, letters and intimation to the respondents to either handover the peaceful physical vacant possession of the said flat or refund the amount Rs.1,33,18,390/- duly received by respondents along with interest to be calculated @ 10 % per annum from the date of booking. Even

after paying the amount of Rs.8,31,200/- towards the Stamp duty, the registration process of the property is not started till date and possession is not handed over to the complainant.

- h. That as per the terms and conditions of the agreement, respondents have committed a default in handing over the peaceful physical vacant possession of the said flat and have committed the continuous breach/delay of more than 10 months, thereby complainant having no other option but to cancel the said flat or to get the possession through the present complaint and requested for the refund of the amounts duly paid along with the compensation and interests.
- i. That it would not be out of place to mention here that the said agreements entered were all invariably one sided, standard format agreements prepared respondents and which were overwhelmingly in favour of respondents with unjust clauses on delayed delivery. It is stated that complainant or any other individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements, even the copies of the said agreements are not provided to the complainant till date.
- j. That as per the section 18(1) of the RERA Regulations, Respondents have failed to fulfil promise and in view of the same Complainant wishes to withdraw and cancel the said unit in the said project on the ground of delay of more than 10 months in handing over of the peaceful physical vacant possession of the flat, unfair trade practice, unscrupulous exploitation of consumer, misleading representation, breach of trust and contract and false commitment and assurances under the Consumer Protection Act, 2019 and

violation of several provisions of real estate (regulation and development) act, 2019.

- k. That even after extreme persuasions and multiple reminders of complainant, neither respondents have handed over the peaceful physical vacant possession of the said flat nor have respondents released the outstanding dues pending and uprightly parted from lawful payables. It is important to mention here that respondents still have not released the outstanding due that is still lying pending, hence instant complaint.
- l. That this act of respondents is highly unlawful, un business like and unethical, which was and still subsists, further the same has caused a lot of financial loss and mental agony to complainant. That the entire camouflage woven by respondents caused a great hardship to complainant and led to financial losses, as a considerable amount has been devoured by respondents.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the amount paid by the complainant along with the prescribed interest of interest from the date of deposit under sections 18 & 19(4) of RERA till actual repayment of money.
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 no. 2

6. The respondent has contested the complaint on the following grounds:

- a. That the Complainant and M/s Umriha Infrastructure Development LLP, entered into an Apartment Buyers Agreement dated 08.06.2012 (hereinafter referred to as "ABA") for purchasing Apartment No. T1-1223, 22nd Floor, Tower No. T1, ATS Kocoon, Sector 109, Gurugram, Haryana. That the sale price of the apartment was fixed at ₹1,22,92,112/- along with the other charges inter-alia as follows:
- b. That an intimation letter for registration of Conveyance/Sale Deed dated 27.09.2021 was made by Respondent 2 to the Complainant for registration of Conveyance/Sale Deed of the unit. That there exists no contractual or any other obligation on the Respondent No. 2 (hereinafter referred to as "Answering Respondent") as far as the Complainant and the apartment in question are concerned as there never existed an agreement between the parties for the unit. That the Complainant entered into an agreement with M/S Umriha Infrastructure Development LLP, for buying the said unit. That the Answering Respondents are not the developers for the project situate at ATS Kocoon, Sector 109, Gurugram, Haryana and are not liable for any deficiency that arose pursuant to the ABA.
- c. That possession of the said Unit was supposed to be handed over by Respondent No.1 pursuant to a joint Development Agreement, in which Respondent No.2 is a party. It is further submitted that the Answering Respondents had requested Respondent No.1 to hand over the possession of the apartment but despite repeated request they had failed to do so. It is further submitted that, upon the presentation of the offer of possession, the complainant neglected to take action and delayed the final handover, and nearly five years later he approached the Respondents to assume possession.

- d. That by way of Indemnity cum Undertaking for carrying out interior fit out works in the said apartment the Complainant admitted that possession had been handed over to him and that he would carry out the Interior fit out works at his own cost by himself. That there was no delay in handing over the possession of the said apartment to the Complainant as has been alleged in the Complaint but there were several delays by the Complainant in completing the payment according to the payment plan. This delay in remittance of the amount due resulted in hindering the final handover.
- e. That by way letter dated 27.09.2021 Respondent No. 5 had offered final handover of the unit and had also mentioned the pre-requisite for registration of the Apartment before the Registrar's office which was to be completed by the Complainant. That any further delay after the offer of final handover had been made was of the Complainant's own making.
- f. That a copy of the ABA as well as a tripartite agreement, was provided to the Complainant as he is a party to the same and the Complainant's allegations to the contrary have no basis. It is further submitted that by way of the Complainants own admission he does not possess a copy of the ABA or the tripartite agreement and the false submission.
- g. That till date the Complainant has not formally requested a refund from the Respondents, as explicitly prayed for in Para 5 of the Complaint. Moreover, an available remedy exists for addressing the Plaintiff's grievances without requiring judicial intervention, wherein this remedy can be pursued through an application directed to M/S Umritha Infrastructure Development LLP to facilitate the refund. It is further submitted that the relief sought by

the Plaintiff in Para 5, specifically requesting possession of the unit, is moot, as such possession has already been extended to the Complainant.

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 complainant.

F.I. Direct the respondent to refund the amount paid by the complainant along with the prescribed interest of interest from the date of deposit under sections 18 & 19(4) of RERA till actual repayment of money.

12. In the present matter the complainant was initially allotted the unit bearing no. T1-1223, on 22nd floor, Tower-1 admeasuring 2095 sq. ft. super area at sector 109, Gurugram in the project ATS Kocoon vide allotment letter dated 09.05.2012 issued by respondent no. 2. Thereafter a builder buyers' agreement was executed between the complainant and respondent no. 3 on 08.06.2012 for a total sale consideration of ₹1,27,57,990/-. As per clause 11 of the said agreement the respondent was obligated to deliver the possession of the unit within 36 months with a grace period of six months from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made. Since, the date of start of construction is not known therefore, the due date of possession is calculated from the date of execution of BBA. The period of 36 months expired on 08.06.2015. As far as grace period is concerned the same is allowed being unqualified. Accordingly, the due date of possession

comes out to be 08.12.2015. The complainant has paid an amount of ₹1,33,18,390/- against the total sale consideration of the subject unit. The respondent has not issued a letter for intimation of possession w.r.t. the allotted unit till date. The occupation certificate w.r.t. the said project has also not been received from the competent Authority. The complainants upon failure of respondent to deliver the unit, has filed the present complaint for refund of the paid-up amount along with the prescribed rate of interest as per RERA Act, 2016.

"Section 18: - Return of amount and compensation

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

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".

13. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (*rate of interest has been inadvertently mentioned as 11.10% in POD dated 05.08.2025.)
16. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
Explanation. —For the purpose of this clause—
(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"
17. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the

due date as per the agreement. By virtue of clause 11 of the agreement executed between the parties on 08.06.2012. The due date of handing over possession comes out to be 08.12.2015 as discussed above.

18. It is pertinent to mention over here that even after a passage of more than 7 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
19. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***
- ".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*
20. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.***

(supra) 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. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. "Since Respondent No. 2 has issued the allotment letter and Respondent No. 3 has executed the agreement with the complainant accordingly, both Respondent Nos. 2 and 3 are jointly and severally liable under Section 18 of the Act. Furthermore, the complainant has failed to place on record any document evidencing a contractual relationship with

Respondent No. 1. Therefore, no directions are warranted against Respondent No. 1. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent no. 2 & 3 is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.90% 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 from the date of each payment 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

23. 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 no. 2 & 3 are directed to refund the amount of ₹1,33,18,390/- paid by the complainants along with prescribed rate of interest @ 10.90% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
 - b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - c. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the

receivable shall be first utilized for clearing dues of allottee-complainants.

24. Complaint stands disposed of.
25. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.08.2025

