

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

Complaint no.: 5095 of 2024
Date of filing 30.10.2024
Date of decision: 11.11.2025

Jasmeet Singh

R/o:- RZ 30, Raghu Nagar, Pankha Road, South
West Delhi, Delhi-110045

Complainant

Versus

M/s ATS Realworth Private Limited.

Regd. office at: - 711/92, Deepali, Nehru Place,
New Delhi-110019

Respondent

CORAM:

Shri Ashok Sangwan
Shri P S Saini

Member
Member

APPEARANCE:

Sh. Nishant Jain (Advocate)
Sh. Yatharth Chugh (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee 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 allottee as per the allotment letter.

A. Project and unit related details

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

Sno	Particulars	Details
1.	Name and location of the project	"ATS Grandstand Phase-1" Sector 99A, Gurugram
2.	Project area	11.5875 acres
3.	Nature of Project	Group housing project
4.	DTCP license no. and validity status	37 of 2013 dated 03.06.2013 valid up to 02.06.2024
5.	Rera registered/ not registered and validity status	Registered vide no. 06 of 2018 dated 02.01.2018 valid up to 29.05.2022
6.	Unit No. mentioned in money receipt and application form	2101, tower no. 2 admeasuring 1011 sq. ft. [pg. 26 of complaint]
7.	Allotment letter	Undated [pg. 28 of complaint]
8.	Welcome letter	30.12.2019 [pg. 35 of complaint]
9.	Date of registered buyer agreement	Not Executed
10.	Possession clause	Cannot be ascertained
11.	Due date of possession	30.12.2022 <i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to

		<p><i>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></p> <p>In view of the above-mentioned reasoning, the date of the welcome letter dated 30.12.2019 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 30.12.2022.</p>
12.	Total Sale Consideration	₹ 73,60,100/- [pg. 32 of complaint]
13.	Amount paid by complainant	₹ 23,20,232/- [as alleged by the complainant at pg. 21 of complaint]
14.	Occupation certificate	Not obtained
15.	Offer for possession	Not offered
16.	Mail by complainant requesting to execute BBA	20.09.2023 [pg. 44 of complaint]
17.	Notice by respondent for refund	23.09.2024 [pg. 54 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That the complainant filed an application form for allotment of a unit in the project. The respondent promised to deliver the unit in the said project on time. An amount of Rs. 2,10,000/- was paid by the complainant to the respondent in lieu of booking a residential unit. The application form signed and submitted by the complainants was filed with arbitrary and one-sided

terms and conditions and even after the protest of the complainant, the respondents demanded that the same be signed. As per the application form, the complainant was not entitled to withdraw or surrender the booking/allotment, for any reason whatsoever at any point of time, in case of non-compliance, the Company shall be entitled to forfeit the advance amount paid for booking allotment along with interest due/payable and brokerage paid for the said booking.

- b. That a Welcome Letter dated 30.12.2019 was issued by the respondent to the complainants acknowledging the receipt of cheque for an amount of Rs. 2,10,000/- towards unit No. 2101, tower 2 admeasuring 1011 sq. ft. along with one car parking in the project "ATS Grandstand". As per Annexure IV of the welcome letter dated 30.12.2019, the company is entitled to terminate the application and allotment for the reasons mentioned therein.
- c. The complainants have complied with all the obligations and paid all the instalments as demanded by the respondent. The complainant does not wish to withdraw from the said project and undertakes to pay the due amounts as per the payment plan. The complainant has not breached of any of the representations nor has failed to perform, comply and observe any of its obligations and responsibilities as set forth in the Application Form and welcome letter.
- d. That the respondent company raised other demands towards the payment of the said unit. In lieu of demand raised by the respondent, the complainant paid an amount of Rs.10,00,000/- on 15.06.2020 and Rs.10,92,000/- on 18.06.2020. In lieu of the payment towards the said unit, the complainant also deposited TDS to the tune of Rs.19,845/-.
- e. That the respondent despite taking money from the complainant, failed to sign a written agreement for sale. Looking at unprofessional and unethical

work of conduct of the respondent, the complainant made several requests to the respondent for clarification on execution of agreement, date of possession and construction update. However, the respondent kept on making false assurances that the said project will be constructed and the possession of the unit of the complainant will be handed over.

- f. That the complainant requested the respondent to add name of his father and Aunt as co-allottee and paid a sum of Rs.11,800/- to the respondent on 17.12.2021 for the same. The respondent despite taking the name addition fee failed to execute a new allotment or any written agreement for sale. By this time the complainant had paid a sum of Rs.23,20,232/- to the respondent.
- g. That after a period of more than 3 years, i.e. 2022 the respondent had not started any construction at the site of the said project. Feeling cheated, the complainant requested the respondent for an update but the respondent avoided explanation for one reason or another. The complainant wanted a home for himself and his family and now, after lapse of more than 5 years, the cost of properties has skyrocketed and the complainant is unable to buy any other home for himself or his family.
- h. That the respondent had failed to execute builder buyer agreement with the complainant despite taking 30% of total sale consideration. The unit admeasuring 1011 sq. ft. and was sold to the complainant for total price of Rs.73,60,100/-. The complainant paid a sum of Rs.23,20,232/- to the respondent. The respondent has taken more than 30% of the cost of the said unit. The respondent is in gross violation of the RERA Act, 2016 and is liable to penalized for this also.
- i. That the complainant is ready to pay outstanding dues as per the payment plan and take possession of his unit. The complainant does not want to

withdraw from the said project and want possession of his unit. The complainant has made all the payments due to the respondent on time and has abided by the terms set forth in application form and welcome letter whereas the respondent is in gross violation of the terms and law.

j. That the delivery of possession of the unit has been delayed due to non-completion of the project by the respondent on time due to illegal misappropriation of the funds, callous attitude and malafide of respondent. The respondent has utilized the deposited amount of complainant for sufficient time and now they are liable to pay delay possession charges and hand over possession of the said unit. The respondent has utilized the deposited amount of the complainant for sufficient time and now the respondent company is liable to pay delayed possession of the unit.

C. Relief sought by the complainant: -

- i. That the possession of unit no. 2101, 10th floor, tower 2, in a group housing namely, "ATS Grandstand", Sector 99-A, Gurugram, having carpet area of 1101 sq. ft. long with one car parking, after taking Occupation Certificate from the concerned department, may kindly be handed over to the complainant by the respondent, along with payment of delayed possession charges from the due date of possession, i.e. 30.12.2022 till actual handover of possession and execution of conveyance deed, whichever is later.
- ii. The respondent may kindly be directed to execute agreement for sale/builder buyer agreement/ written agreement as per the rules of RERA Act.
- iii. That the respondent be directed to complete the construction of the project "ATS Grandstand" as per the approved layout plan and provide all the amenities as promised in its brochure.

- iv. That, in case, the respondent is not constructing the unit of the complainant, the respondent may kindly be directed to file list of similarly placed unsold units being developed by the respondent and/or its group companies as an option for the complainant to choose an alternate unit. Further, handover possession of the alternate unit at the same rates alongwith payment of delayed possession charges from the due date of possession of original unit, i.e. 30.12.2022 till actual handed over of possession and execution of conveyance deed, whichever is later.
- v. That the respondent may kindly be directed to submit in writing, in shape of affidavit the reasons for not constructing the project and make assurance that no construction will be made by the respondent company or its group companies at the site of the project.
- vi. The respondent may kindly be directed not to charge anything that is outside the purview of RERA Act and rules.
- vii. That the cost of litigation amounting to Rs.1,00,000/-.

- 4. On the date of hearing, the authority explained to the respondent/promoters 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.
- 5. The present complaint was filed on 30.10.2024 in the Authority. That the Respondent has failed to file its written statement/reply despite being granted sufficient opportunities. Advocate Akshat Jain proxy appeared on behalf of the Respondent on 02.01.2025. The Respondent was previously granted opportunities to file its defence on 02.01.2025, 20.02.2025 & 15.05.2025. However, no reply has been filed till date. Accordingly, the right of the respondent to file its defence was finally struck off by the Authority on 10.09.2025.

6. 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 those undisputed documents and submissions made by the parties. The case is now proceeded on merits and findings on relief sought shall be deliberated on the complainant's submission.

D. Jurisdiction of the Authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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 complainant at a later stage.

E. Findings on the relief sought by the complainant.

E.I Possession

11. In the present matter the complainant was allotted the unit bearing no. 2101, 10th floor, tower 2 admeasuring 1011 sq. ft. at sector 96A, Gurugram in the project ATS Grandstand phase 1 vide welcome letter dated 30.12.2019. That the total sale consideration of the unit is Rs.73,60,100/-.

12. The respondent sent notice for refund regarding the subject unit vide letter dated 23.09.2024 wherein the respondent stated that the said unit is not deliverable due to lack of technical and financial viability of the said project and the respondent is ready to refund the amount paid along with interest. The counsel for respondent in the present matter stated at bar that up on failure to complete the said project as per sanctioned plan, has applied for de-registration of the project "ATS Grandstand Phase 1". The Authority observes that the said cancellation is not valid. The Authority observes that the complainant is willing to continue in the said project and since as per respondent the said project is not deliverable therefore, the respondent is directed to hand over the possession of an alternate unit similarly situated, may be in another project being developed by the respondent of similar size and at similar price within 60 days from the date of this order.

13. In light of these observations, the respondent is directed to offer an alternative unit at similar location to the complainant at the same rate as per the agreed terms of the subject agreement and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority.

14. The complainant/allottee does not intent to withdraw from the project and is seeking possession of the unit along with interest on the amount paid in terms of Section 18(1) of the Act. The provisions of Section 18(1) of the Act, 2016 are 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 allottee, 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)

15. **Due date of possession:** Further, the Authority observed that no specific time period with respect to handover of possession of the allotted unit to the complainant had been prescribed. Therefore, in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018***, the Hon'ble Apex Court observed that "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. Since no BBA has been executed between the parties therefore the due date of possession is deemed to be calculated as 3 years from the date of welcome letter i.e., 30.12.2019. Accordingly, the due date of possession comes out to be 30.12.2022.

16. Admissibility of delay possession charges at prescribed rate of interest:

Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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]

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.

17. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid, 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.

18. 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., 11.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

19. The definition of term 'interest' as defined under section 2(za) 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 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 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;"

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to them in case of delayed possession charges.
21. The complainant is also seeking relief of possession. The Authority is of the considered view that there is delay on the part of the respondent to offer possession after receipt of the occupation certificate from the competent authority of the allotted unit to the complainant. And as per the reasonings as stated above the Authority has set aside the letter dated 23.09.2024. The respondent is directed to hand over the possession of the allotted unit to the complainant. Furthermore, in case the subject unit is not available, the respondent is further directed to allot an alternate unit similarly situated at the same price and size which was earlier agreed between the parties.
22. 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 is established. As such the complainants are entitled to delay possession charges at prescribed

rate of the interest @ 10.85% p.a. w.e.f. due date of possession i.e., 30.12.2022 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

E.II Execute BBA

23. The respondent is directed to execute the BBA with the complainant within a period of 60 days from the date of this order.

E.III. Litigation cost

24. That Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.** 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.
25. That the rest of the reliefs were not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The Authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the Authority has not returned any findings with regard to the above-mentioned reliefs.

F. Directions of the Authority

26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the

promoter as per the functions entrusted to the Authority under section 34(f) of the Act:

- i. Cancellation is set aside. The respondent is directed to hand over the possession of the allotted unit to the complainant. Furthermore, in case the subject unit is not available, the respondent is further directed to allot an alternate unit similarly situated at the same price and size which was earlier agreed between the parties within two months from the date of this order and handover its physical possession after obtaining occupation certificate/completion certificate from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- ii. The respondent is directed to execute buyer's agreement within a period of 90 days from the date of this order
- iii. The respondent is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85 % p.a. w.e.f. due date of possession i.e., 30.12.2022 till valid offer of possession after obtaining of OC from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iv. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

v. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.

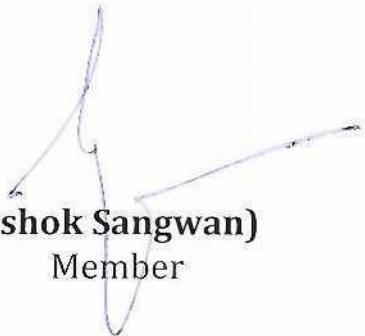
27. Complaint stands disposed of.

28. Files be consigned to registry.



(P S Saini)

Member

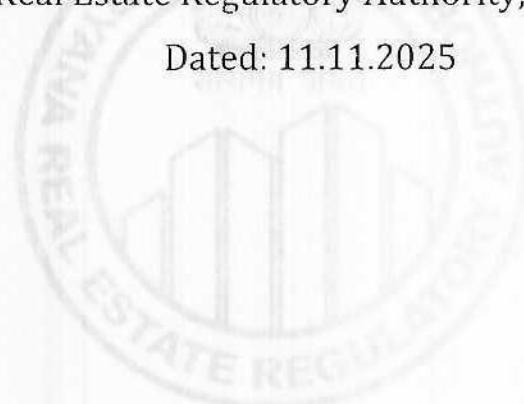


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.11.2025



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