

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No.477-2024

Date of Decision: 19.01.2026

Sh. Rakesh Jain S/o Sh. Prakash Chand Jain, R/o 172B Charriappa Marg, Sainik Farm MB Road, New Delhi-110062.

Complainant

Versus

M/s ATS Real Estate Builders Private Limited, Regd. Office: 711/92, Deepali Nehru Place, New Delhi, South Delhi- 110019.

Respondent

APPEARANCE

**For Complainant:
For Respondent**

**Mr. Kuldeep Kumar Kohli, Advocate.
Ms. Shivani Dang, Advocate.**

ORDER

1. This is a complaint, filed by Sh. Rakesh Jain (allottee) under section 18 (3) and 19 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s ATS Real Estate Builders Private Limited (promoter) as per section 2(zk) of Act of 2016.
2. According to complainant, he approached the respondent for booking Unit No. 6062 on 6th floor, tower 06 in Project "ATS Marigold",

AO

Sector 89A, Gurugram, residential group housing, Tower-06, admeasuring 2650 sq. ft. on 22.08.2014. The respondent allotted said unit to him (complainant) on 22.08.2014. A builder's buyer agreement (BBA) was executed on 13.11.2014 between the parties. The due date of possession as per ABA was 13.11.2018. The delay in handing over possession till date of filing complaint was more than 9 years. The basic sale consideration of unit was agreed at Rs.1,59,00,000. A total amount of Rs.65,95,829/- was paid by the allottee till filing of complaint.

3. It is further pleaded that the respondent took the money from him (complainant) and utilized the same for some other purposes i.e. for making investments in some other properties but did not execute the project for which the money was collected from the allottees. The respondent has violated the term of clause 6.2 of BBA 13.11.2014. The complainant prayed for compensation on following grounds: -

i. That the respondent is in 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 this Act or the Rules and regulations made thereunder to the allottee as per the agreement for sale executed inter se.

AD

ii. That respondent had substantially failed to discharge its obligations imposed them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

iii. That from Section 71 of Act, 2016, it is clear that an adjudicating officer is empowered to adjudge compensation under Section 12, 14, 18 & 19 of the Act.

iv. That as per Section 18 (3), if the promoter fails to discharge any other obligation imposed on him under this Act or the Rules or regulations made there under or in accordance with the terms and conditions of the Agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

4. Contending all this, the complainant requests for a compensation of Rs.81,56,250/- for loss of escalation cost of similarly located and similarly priced properties in the period of ten year⁸, Rs.15,00,000/- for mental agony, emotional pain to family and complainant, physical stress and torture and Rs.3,00,000/- for legal fee etc.

5. The respondent contested the complaint by filing a written reply. Following is averred by the respondent: -

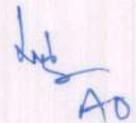
6. That this complaint is neither maintainable nor tenable and is liable to be outrightly dismissed. The Apartment Buyer's Agreement (ABA)

AO

was executed between the complainant and the respondent prior to the enactment of the Act of 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

7. That the respondent vide its letter dated 16.03.2015, reminded the complainant to make the due payment for the net payable amount of Rs.3,56,872/- which were due to be paid by 25.11.2014. The respondent vide its letter dated 14.03.2018, reminded the complainant to make the due payment for the net payable amount of Rs.16,09,874/- (excluding of tax) due to be paid on or before 24.03.2018. However, the complainant failed to remit the demanded amount despite reminders dated 04.04.2018 & 17.05.2018. Left with no other option, the respondent was constrained to send final notice to the complainant dated 22.10.2018.

8. That the complainant previously filed a complaint seeking refund of the entire amount paid by him to the respondent. The said complaint was disposed of vide order dated 16.08.2023 vide which the Hon'ble Authority directed it (respondent) to refund the amount of Rs.65,95,229/- along with interest at the rate of 10.75% p.a. from the date of each payment till the actual date of refund amount. The complainant then filed execution petition bearing no. 485 of 2024 for execution of the


AO

said order dated 16.08.2023 passed by the Hon'ble Authority. The respondent has already paid the entire decretal amount to the tune of Rs.1,34,00,000/- on 25.10.2024.

9. Denying all averments, respondent has prayed for dismissal of complaint.

10. Both of the parties filed affidavits in support of their claims.

11. I have heard learned counsels appearing for both of parties and perused the record.

12. During arguments, learned counsel for respondent raised an objection that when complainant has already been allowed refund of the amount by the Authority, same has no locus standi to approach this Forum seeking compensation.

13. Admittedly, a complaint filed by present complainant, No. 4183 of 2022 seeking refund of the amount was allowed by the Authority vide order dated 16.08.2023. The copy of such order is on the record. Through said order, respondent/promoter has been directed to refund the amount of Rs.65,95,829/- paid by the complainant along with interest @ 10.75% p.a. from the date of each payment till the actual date of refund of the amount. The Authority noted in said order that apartment buyer's agreement between the parties was executed on 13.11.2014. A period of

Wb
AO

42 months along with grace period of 6 months was allowed to the respondent for completion of the project and that period has admittedly expired on 13.11.2018. It has come on record that against the basic sale consideration of Rs.1,59,00,000/- the complainant has paid a sum of Rs.65,95,829/- to the respondent constituting 41.48% of basic sale consideration. The complainant-allottee raised a concern that despite payment of more than 40% of consideration and passing of due date of handing over of possession in 2018, the respondent-builder has failed to hand over the possession of the subject unit. The Authority upheld that the allottee-complainant wish^{-ed} to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest. In other words, the Authority found fault in the respondent in handing over the possession of the subject unit.

14. Section 18 (1) of Act 2016 provides that if the promoter fails to complete or 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) -----,

AO

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----- **including compensation, in the manner as provided under this Act.**

15. From this provision, it is abundantly clear that in case promoter fails to complete the project or to give possession of an apartment, plot etc. in agreed time, the allottee is entitled for refund of the amount along with interest as well as compensation determined in the manner as provided under this Act. The complainant was thus entitled for refund of the amount as well as compensation from the promoter i.e. respondent.

16. So far as plea of respondent that ABA between parties was executed before enactment of Act of 2016 and hence provisions of this Act are not applicable is concerned, even if ABA was entered between the parties of this case prior to enactment of Act of 2016, it not plea of respondent even that project in question was completed before said Act came into force. In this way, it was an ongoing project and was liable to be registered under the Act. No force in this plea of respondent.

J. B. Jain
AO

17. As described earlier, complainant has sought compensation of Rs.81,56,250/- on account of the loss in the market rates after a gap of 10 years, Rs.15,00,000/- towards mental agony, physical torture and pain and Rs.3,00,000/- for legal fee to pursue the case before the Authority as well as before the Adjudicating Officer.

18. However, complainant did not adduce any reliable evidence to prove as what loss of appreciation has been caused to him. The due date of possession as per ABA between the parties, was 13.11.2018. Possession was never handed over to the complainant, but ultimately after filing a complaint before the Authority, the complainant got an order of refund from the Authority dated 16.08.2023. **As per AI Overview, prices of houses in Gurgaon have experienced a dramatic, multi-fold appreciation between March 2018 (Due date of possession being 13.11.2018) and August 2023 (date of order of refund), driven by post-pandemic demand, infrastructure improvements and a surge in the luxury segment. Property values in key areas have roughly doubled or more since 2019, with average rates jumping from approximately Rs.9,718/- per sq. ft. in Q2 2023 to over Rs.16,186 per sq. ft. in Q2 2025.** The project where the complainant had booked his unit

2/16
AD

i.e. ATS Marigold, Sector 89A, Gurugram, is near to Dwarka Expressway. It can be presumed that amount paid by complainant to the respondent in purchase of subject unit, if was invested in some other similar project, it would have at-least doubled till the date of order of refund i.e. 16.08.2023. Admittedly complainant paid a sum of Rs.65,95,829/-. Said amount has already been ordered to be refunded by the Authority. The complainant is thus allowed a sum of Rs.65,95,000/- (rounded up) to be paid by the respondent as loss of appreciation caused to the complainant.

19. When complainant could not get his dream unit despite making payment of about 40% of sale consideration, all this apparently caused mental harassment and agony to the complainant. Same is allowed a sum of Rs.1,00,000/- as compensation for mental agony and harassment. Amount of Rs.15,00,000/- as claimed by the complainant appears to be excessive. Similarly cost of litigation of Rs.3,00,000/- is also excessive. No court fee is required to be paid to the Authority, while filing a complaint. The complainant was represented by an advocate during proceedings of this case, same is thus allowed a sum of Rs.50,000/- as cost of litigation.

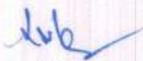
20. The amounts mentioned above be paid by the respondent to

h
AD

the complainant along with interest at rate 10.85% per annum from the date of this order till realization of amount.

21. Complaint is thus disposed of. File be consigned to the record room.

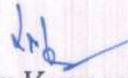
Announced in open court today i.e. on 19.01.2026.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.

Present: Mr. Kuldeep Kumar Kohli, Advocate for complainant.
Ms. Shivani Dang, Advocate for respondent.

Complaint is disposed of vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
19.01.2026