



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी.

विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 5681/2019
Date of Decision : 07.04.2021

Sudhir Bhargava & Anurag Bhargava
7/203, Swarup Nagar, Kanpur,
Uttar Pradesh

Complainants

V/s

(i) M/s ATS Real Estate Builders Pvt Limited
711/92, Deepali Nehru Place
New Delhi-110019

(ii) ICICI Bank Limited
Land Mark, Race Course Circle,
Vadodra

Respondents

Complaint under section 31
of the Real Estate (Regulation and
Development) Act, 2016

Argued by:

For Complainants:
For Respondent No.1
For Respondent No. II

Sh. Nikhil Pillai, Advocate
Shri M K Dang, Advocate
None

ORDER

This complaint has been preferred by Shri Sudhir Bhargava & Anurag Bhargava complainants under section 31 of the Real Estate(Regulation and

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Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of 2017) seeking refund of Rs.1,53,53,945/- deposited for booking a flat bearing 4122, 12th Floor, Tower No.4 in its project known as " ATS MARIGOLD" located in Sector 89A, Gurugram for a sum of Rs.1,60,68,750/- besides taxes etc. on account of violations of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"ATS MARIGOLD" Sector 89-A, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	4122
V.	Tower No. / Block No.	Tower-4
VI.	Size of the unit (super area)	Measuring 2150 sq ft
VII.	Size of the unit (carpet area)	-DO-
VIII.	Ratio of carpet area and super area	-DO-
IX.	Category of the unit/ plot	Residential
X.	Date of booking(original)	23.07.2015
XI.	Date of Allotment(original)	24.09.2015(A-2)
XII.	Date of execution of BBA	25.09.2015(A-3)
XIII.	Due date of possession as per BBA	March, 2019

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XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	
XVI	Tripartite Agreement for Rs.1,21,44,700/-	Oct. 2015(A-4) Availed loan of Rs.1,11,73,196/- upto July, 2016

Payment details

XVI	Total sale consideration	Rs.1,60,68,750/-
XVII	Total amount paid by the complainants upto 07.08.2018	Rs.1,53,53,945/-

2.

A project known by the name of ATS MARIGOLD located in Sector 89A, Gurugram was being developed by the respondent No.1. The complainants coming to know about the same decided to book a flat in it for a total sale consideration of Rs.1,60,68,750/- on 21.07.2015. A letter of allotment dated 22.09.2015 A/2 was issued in favour of the complainants. It also led to execution of Builder Buyer Agreement(A-3) dated 25.09.2015 between the parties. It is the case of the complainants that they also raised a loan of Rs.1,21,44,700/- from ICICI Bank by executing Tripartite Agreement A/4 on 08.10.2015. A part of the loan amount was disbursed to the complainants. So, in this way, they started paying various amount to the respondent-builder and paid a total sum of Rs.1,53,53,945/- upto 07.08.2018. The due date for completion of project and offer of possession of the allotted unit was fixed as March 2019. However, neither the respondent-builder paid pre-EMIs as agreed upon under the scheme of Subvention till possession nor offered possession by the due date. Though a number of reminders were issued to complete the project and offer possession of the allotted unit to them but without any positive result as evident from the emails Annexure 6 and Annexure 7 respectively. When the

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to that BBA (A/3) was executed between the parties on 25.09.2015, the due date for completion of the project and offer of possession as per that document was March, 2019. The unit of the claimants was booked under the subvention scheme. So, TPA (A-4) was executed between the parties to the dispute on 08.10.2015. Though a sum of Rs. 1,21,44,700/- was sanctioned but a part of the same to the tune of Rs.1,11,73,196/- Was disbursed and paid to the respondent^{no 1} by respondent No. 2. It is not disputed that the claimants paid a total sum of Rs. 1.53,53,945/- to the respondent-builder upto 07.08.2018. It is their case that neither the respondent-builder was regular in paying pre-EMIs of the loan sanctioned in their favour by respondent no. 2 nor the construction of the project was going on at a proper speed. So, the same led to issuance of e-mails annexure A-6 and A-7 (a number of e-mails) by the complainants to the respondent-builder. Neither the respondent-builder communicated to them about the status of the project nor reimbursed regularly the amount of pre-EMIs. So, keeping in view all these facts, they withdrew from the project and sought refund of the amount deposited with it. In this regard, besides referring to documents detailed above, a reference has been made documents A-5, A-6 and vide which the claimants requested a number of times to the respondent-builder to pay pre-EMIs and inform them about the status of the project but without any positive result. The complainants had already paid a major part of the sale consideration and the due date for completion of the project and offer of possession of the allotted unit has already expired. So, in such a situation, the claimants are entitled to seek refund of the amount deposited with the respondent-builder.

8. But on the other hand, it is contended on behalf of the respondent No.1 that though the complainants booked a unit in its project detailed above and paid different amounts but there was delay in making scheduled payments leading to issuance of reminders annexure R-5 to R-9 on 14.03.2018, 04.04.2018, 16.05.2018, 22.05.2018 and 07.08.2018 respectively. Secondly, ^a number of factors also were responsible for delay in completion of the project such as Central Government's notification with regard to demonetization, orders passed by the National Green Tribunal in the years

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claimants that there was delay in making payments of pre-EMIs to respondent No.2 by respondent No.1 but that fact is belied and is against the record. There is some delay in making payment towards that account but document Annexure A/8 consisting of 24 pages proves otherwise. The complaint seeking refund of the amount deposited with the respondent-builder was filed by the complainants on 16.11.2019 and the due date for completion of the project and handing over possession of the allotted unit has already expired in March, 2019. It is pleaded on behalf of respondent No.1 that since, there was delay in making payment by the complainants as well as other allottees as evident from Annexure R/5 to R/9, so the construction of the project could not pick up. Secondly, the respondent also referred to documents Annexure R/1 to R/4 i.e. copies of orders dated 07.04.2019 passed by the National Green Tribunal, study of RBI and other studies/inspection reports, press releases, Environment Pollution (Prevention and Control) Authority for stoppage of construction activities in 2018 and report regarding weather conditions. But whether these factors are sufficient for delay in completion of the project and offer of possession of the allotted unit to the complainants. The answer is in the negative. Though photographs annexed with R/10 at page 88 to 89 shows ^{the} stage and extent of construction but it cannot be said that the project is near completion and its possession is likely to be handed over to the allottees including ^{the} complainants soon. In cases of **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan(2019) 5, SCC, 725 Civil Appeal No.12238 of 2018 decided on 02.04.2019** and followed by **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019** decided on 11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be asked to wait indefinitely for possession of the allotted unit and is entitled to seek refund of the amount paid by him alongwith compensation. Moreover, when the due date has already expired, then the allottees cannot be made to wait to seek refund of the amount deposited with the respondent-builder and offer of possession. Then, Section 18 of Real Estate(Regulation and Development) Act, 2016 provides for refund and the same runs as under:

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18. Return of amount and compensation-

(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)
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.

It was also observed in the second case detailed above that when the project is not complete and occupation certificate has not been obtained, then the allottee cannot be made to wait indefinitely for possession of the apartment allotted to them nor they can be bound to take the possession of the apartment in another project. So, in such a situation, the allottees are entitled to see refund of the entire amount deposited with the respondent. Lastly, in case of **DLF Universal Ltd & Anr Vs Capital Greens Flat Buyers Association** etc. Civil Appeal No. 3864-3889 of 2020 decided on 14.12.2020, it was observed by the Hon'ble Apex Court of the land that delay in approval of building plans and issuance of stop work orders as a result of fatal accidents during the course of construction being force majeure conditions cannot be taken into consideration in achieving timely completion of contractual obligations. Even, there was also an exit offer given to the flat buyers on two occasions by the builder and which also resulted in delay in completing the project. So all these circumstances were not considered sufficient for invoking force majeure conditions and resulted in payment of delayed possession charges to the allottees by the builder.

10. Thus, the plea of the respondent with regard to delay in completion of the project and offer of possession to the complainants including other allottees as a ground to displace their cause for refund is not tenable. Even, it is not disputed

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that upto now neither any occupation certificate of the project in which the complainants were allotted a unit has been received nor any offer of possession of the allotted unit has been made to them So, their plea of seeking refund of the deposited amount in view of ratio of law laid down in cases of **Ireo Grace Real Tech Pvt Ltd. Vs Abhishek Khanna & Others**, and **Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghvan** is very much maintainable.

11. Thus, in view of my discussion above and taking into consideration all the material facts brought on record by both the parties, it is evident that the respondent-builder violated the terms and conditions and other commitments agreed upon between the parties and there is no reasonable justification for delay in offer⁷ possession of the allotted unit to the complainants. So, the respondent-builder is guilty of violating the terms and conditions of BBA. Thus, accordingly, the complainants are held entitled to seek refund of the deposited amount with the respondent-builder to the tune of Rs.1,53,53,945/-. The following directions are hereby ordered to be issued against the respondent-builder:

- (i) The respondent-builder is directed to refund a sum of Rs.1,53,53,945/- besides interest @ 9.30% p.a. from the date of receipt of each payment upto the date of actual payment to the complainants;
- (ii) The amount of pre-EMIs paid by the respondent-builder in the account of complainants, if any, would be deducted while calculating the total amount due towards them;
- (iii) The loan amount received by the complainants against the allotted unit and paid to the respondent-builder would be a charge payable to respondent No.2 and the same would be paid prior to paying the deposited amount to them.
- (iv) There would be charge on the allotted unit No.4122, Tower-4, measuring 2150 sq ft. situated in the project known as 'ATS Marigold' Sector 89-A, Gurugram till the whole amount detailed above is paid by


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the respondent-builder to respondent No.2 as well as to the complainants;

- (v) The respondent-builder is further debarred from creating third party rights with regard to unit in question without paying the amount detailed above;
- (vi) The above mentioned directions be complied with by the respondent-builder within a period of 90 days and failing which legal consequences would follow.

12. File be consigned to the Registry.

07.04.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority: Gurugram
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Judgement uploaded on 16.04.2021