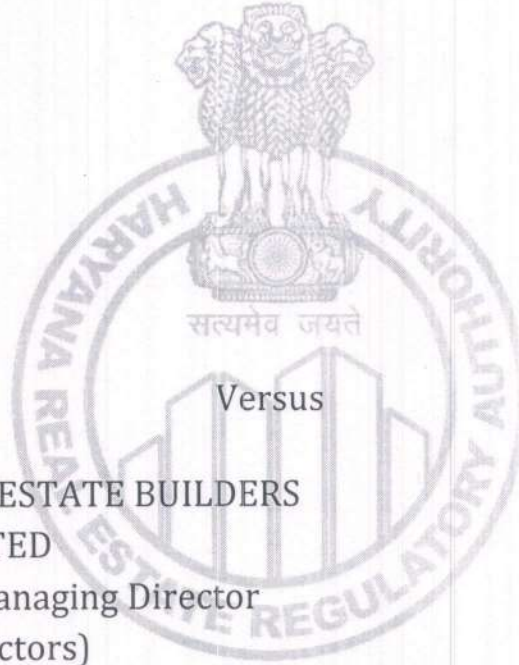


**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 1332 of 2020

Date of decision : 10.11.2021

AJAY SINGHAL
R/O : C-903,
Pioneer Park,
Sector-61,
Gurugram.



Versus

M/s ATS REAL ESTATE BUILDERS
PRIVATE LIMITED
(Through its Managing Director
And Other Directors)
ADDRESS : 711/92, Deepali,
Nehru Place, New Delhi-110019

Complainant

Respondent

APPEARANCE:

For Complainant:

Ms. Surbhi Garg Advocate

For Respondent:

Mr. M. K. Dang Advocate

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ORDER

1. This is a complaint filed by Ajay Singhal (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/promoter.
2. As per complainant, on 09.07.2013, he booked a residential apartment in respondent's project **ATS Marigold**, situated at sector-89 A, Gurugram and made payment of Rs 10,00,000 as booking amount. The respondent vide allotment letter dated 01.04.2015 allotted a unit No. 4141 in Tower no. 4, admeasuring 1750 sq. ft. for a total consideration of Rs 1,26,13,993 including BSP, PLC, EDC and taxes etc. A buyer's agreement dated 01.04.2015 was executed between parties, in this regard.
3. As per Clause 6.2 of buyer's agreement, the possession of said premisses was to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's agreement, with further grace period of 6 months. The respondent failed to complete the construction work and consequently failed to deliver the same, till date. As per demands raised by respondent, he (complainant) made timely payment of Rs 32,35,302/-, but to his utter dismay, the possession of the apartment has not been offered as agreed in buyer's agreement.

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4. When he (complainant) visited the site in September 2015, there was no considerable construction progress. The project was still in the initial stage of construction despite two years, having been elapsed from the date of booking. He contacted representatives of respondent and enquired about the slow progress at the construction site, it was assured that construction will resume full pace soon.
5. Even in March 2016, there was no progress at site. The complainant had opted for construction linked payment plan and respondent can raise demand for payment only in accordance with construction status. The respondent has raised arbitrary demands without substantial construction progress.
6. In the year 2018, the respondent had introduced subvention scheme payment plan for subject project, with lower price of units. The complainant requested respondent to upgrade his payment plan to subvention scheme and also requested to lower down the price of his unit at par, with other units being sold in the project. The respondent failed to address the request of complainant. He had sent an email dated 25.04.2019, in this regard but to of no avail.
7. Contending that the respondent has breached the fundamental terms of contract, by inordinately delaying delivery of the possession, the booking of the unit was made

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in the year 2013 and even till filing of this complaint, the project was nowhere near completion, the complainant has sought refund of entire amount of Rs 32,35,302/- paid by him till now along with interest at the prescribed rate, Rs 1,00,000 as compensation on account of loss/injury as well as mental agony and Rs 30,000 as cost of litigation.

8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" ATS MARIGOLD", Sector 89A, Gurugram,
2.	Project area	11.125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	87 of 2013 dated 11.10.2013 valid upto 10.10.2017
5.	RERA Registered/ not registered	Registered
UNIT DETAILS		
1.	Unit no.	4141
2.	Unit measuring	1750 sq. ft.
3.	Date of Booking	09.07.2013
4.	Date of Allotment	01.04.2015



5.	Date of Buyer's Agreement	01.04.2015
6.	Clause 6.2 of buyer's agreement: The possession of the said premises was to be delivered by the developer to the allottee within 42 months from the date of execution of buyer's agreement, with further grace period of 6 months.	01.10.2018 (Calculated from the date of agreement)
7.	Delay in handing over of possession till date	3 years 01 month
PAYMENT DETAILS		
8.	Total sale consideration	Rs 1,26,13,993 /-
9.	Amount paid by the complainant	Rs 32,35,302 /-
10.	Payment Plan	Construction Linked Plan

11. The respondent contested the complaint by filing a reply dated 25.03.2021 and raised pre-objection stating that the buyer's agreement was executed between parties prior to the enactment of Act of 2016 and hence provisions laid down in the said Act, cannot be applied retrospectively. Moreover, there is an arbitration clause (clause 21.1) in the agreement, complainant without invoking arbitration proceedings, has filed this complaint. Same is thus liable to be dismissed.

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12. It is contended further that it (respondent) had raised the payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as of payment plan. Several reminders dated 16.03.2015, 07.08.2015, 27.08.2015, 16.10.2015, 03.02.2016 and 05.04.2016 were issued on account of delay. The complainant has been in default since 2015 and he is bound to make payment as interest is recurring on the same. Again, reminders dated 04.04.2018, 17.05.2018, 15.06.2018 and final notice dated 02.02.2020, were sent with demand of Rs 79,14,691, but complainant failed to remit the due amount. As per the said final notices dated 28.09.2016 and 02.02.2020 the complainant was asked to remit the outstanding amount, otherwise treat the agreement as cancelled.

13. It is also plea of respondent that the project got hampered due to non-payment of instalments by allottees on time and also due to events and conditions which were beyond its control. All this, affected the construction and progress of the project. Due to implementation of demonetisation, the construction was halted for 7-8 months, as payment to labour was to be made in cash. Further, in last successive years i.e. 2015, 2016, 2017 and 2018, NGT has passed orders to protect the environment. The contractor could not undertake construction for 3-4 months in compliance of the orders of NGT. There was delay of 3-4 months as labour went back to their hometowns, which resulted in



shortage of labour in April-May 2015, November-December 2016 and November - December 2017. The construction remained badly affected for 6-12 months due to these orders.

14. Moreover, heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions badly affected all construction activities. The sudden outbreak of covid-19, delayed construction work, as the pandemic disrupted the supply chain of necessary materials and also resulted in shortage of labour at construction sites as labourers migrated to their respective hometowns.

15. The complainant has made part payment of Rs 32,35,302 out of the total demanded amount of Rs 1,11,49,993/-. He is bound to make payment towards remaining due amount along with other charges. The respondent has already completed the construction of the tower in which subject unit is situated and it shall soon apply for grant of occupation certificate.

16. Contending all this, respondent prayed for dismissal of complaint.

17. I have heard learned counsels for parties and perused the documents on record.

18. So far as pre-objection of respondent that Act of 2016 or Rules 2017 are not applicable in this case, is concerned. It is not plea of respondent that completion certificate was received when this Act came into force. In this way, it was an ongoing project. The respondent was obliged to apply for

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registration within 3 months. Provisions of Act of 2016 are well applicable, in this case. I find no merit in pre-objection raised by respondent.


19. There is no evidence on record, to prove as for how much time, the construction work of subject project was halted due to orders passed by NGT. Details of orders not provided by the respondent. The delay cannot be justified on such grounds, without any evidence to substantiate the same.
20. Demonetization of some currency notes was remotely connected with completion of project. There was no restriction on payment through electronic transfer/e-banking transactions. Most of people in India have opened bank accounts.
21. The unit in question was booked on 09.07.2013 by making payment of Rs 10 lacs, even then buyer's agreement was executed on 01.04.2015. Respondent used money of complainant for about two years without any reason. Even otherwise, as per complainant the respondent had agreed to handover possession within 42 months of buyer's agreement with grace period of 6 months. Due date of possession was October 2018, (without grace period). The respondent has not received occupation certificate for the project in question till filing of complaint in 2020. As per counsel for complainant the latter had opted for construction linked payment plan and as there was no construction, same did not make further

payments. The respondent has not placed on record any document to establish that the payment demands as raised by it were in consonance with the construction work. True, pandemic of covid19, gripped entire nation and government of India was constrained to impose lockdown but all this happened on and after 23rd March 2020 i.e. much after lapse of agreed period for handing over possession of unit to complainant.

22. It is not denied that complainant has already paid Rs 32,35,302 /- and respondent is not in position to deliver the possession as it has not received occupation certificate till date. It is well settled that a buyer cannot be made to wait for his/her dream unit, indefinitely. Respondent has grossly failed in its obligation to complete and handover possession of unit to complainant within agreed time.

23. Considering facts stated above, complaint in hands is allowed and respondent is directed to refund entire amount paid by complainant i.e. Rs 32,35,302 /- within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A litigation cost of Rs 50,000 is also imposed upon respondent to be paid to complainant.

10.11.2021


(RAJENDER KUMAR)
Adjudicating Officer
Haryana Real Estate Regulatory Authority
Gurugram