

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

Complaint no. : 4463 of 2021
Complaint filed on: 08.12.2021
Date of decision: 18.04.2024

1. Mr. Vijyant Agarwal
2. Mrs. Vineeta Agarwal

Both RR/o:- House no 07, Type V, Netaji Subhas
University of Technology (Govt of NCT of Delhi), Sector
03, Dwarka, New Delhi-11078

Complainants

Versus

ATS Realworth Private Ltd.

Registered Office: 711/92, Deepali, Nehru Place, New
Delhi- 110019

Corporate Office: ATS Tower, Plot No. 16, Sector-135,
Noida

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Soibal Gupta and Himanshu Swami (Advocates)

Complainants

Shri Nitish Harsh Gupta (Advocate)

Respondent

ORDER

1. The present 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 to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project 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:

Sr. No.	Particulars	Details
1.	Name of the project	ATS Grandstand Phase-I, Sector 99 A, Gurugram.
2.	Project Area	11.5875 acres
3.	Nature of the project	Residential Project
4.	DTCP License No.	37 of 2013 dated 03.06.2013 valid up to 02.06.2024
5.	Name of licensee	Hasta Infrastructure Pvt. Ltd.
6.	RERA Registration/not	Registered vide no. 06 of 2018 dated 02.01.2018 valid up to 02.01.2028 to 8 years from the date of environment clearance
7.	Unit no.	3051, 05 th Floor, Tower no.03, Type- D (Page no. 16 of complaint)
8.	Area admeasuring	1011 sq. ft. (Page no. 16 of complaint)
9.	Date of execution of builder buyer agreement	25.10.2018 (Page no. 15 of complaint)
10.	Possession clause	7 POSSESSION OF THE APARTMENT FOR RESIDENTIAL USAGE: 7.1 Schedule for possession of the said apartment for Residential usage- <i>"..... The Promoter assures to handover possession of the apartment for Residential usage along with Car Parking (if applicable), on or before 30th June 2023, unless there is delay due to "force majeure". Court orders, Govt. policy/guidelines, decisions affecting the regular development of the real estate project. If, the competition....."</i>
11.	Due date of delivery of	30.06.2023

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	possession	(As mentioned in the buyer's agreement)
12.	Payment plan	Subvention payment plan (Page no. 40 of complaint)
13.	Total sales consideration	Rs.83,36,769/- (As per page no. 19 of complaint)
14.	Total amount paid by the complainant	Rs.7,20,000/- (Page no. 21 of complaint)
15.	Occupation Certificate	Not Obtained

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That on 25.10.2018, an agreement to sell was executed between the parties for flat no 3051 at 5th floor in Tower - 3, super area 1550 sq. ft. in the project "ATS Grandstand Phase- I". It is pertinent to mention here that said the flat was booked for a total sale consideration of Rs.83,36,769/-. As per clause no. 7.1 of the said agreement to sell, the respondent have to give possession on or before 30.06.2023.
- II. That on 23.10.2018, respondent/promoter issued a letter pertaining payment of Pre EMI till offer of possession, wherein the respondent with respect to apartment no. 3051 in ATS Grandstand Phase -I, situated at sector-99, Gurugram vide above-mentioned letter informed the complainants that after expiry of Subvention scheme (as approved by PNBHFL Bank), the present scheme shall be treated as closed and the buyer shall be solely liable to pay the remaining EMI's of his bank loan.

C. Relief sought by the complainants

4. The complainants have sought following relief:

- i. Direct the respondent to pay Pre Emi directly to the bank (Financial Institution) as mentioned in the enclosed letter of the builder (ATS).

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- ii. Direct the respondent to submit the status of construction of the project till date.
 - iii. Direct the respondent to handover physical possession of the flat (complete in all respect as per BBA and Brochure).
 - iv. Direct the respondent to provide possession date of the residential unit
 - v. Direct the respondent to submit details of latest ESCROW Account of the project including credit and debit records.
5. Despite proper service of notice, no written reply has yet been filed. Moreover, the service is also confirmed from the fact that the respondent put in appearance through it's Advocate and marked attendance on 19.04.2022, 02.08.2022, 02.03.2023, 20.07.2023, 24.08.2023, 14.09.2023, 19.09.2023, 02.11.2023, and 18.01.2024 and was directed to file the reply within stipulated time period. Despite proper service of notice, the respondent has failed to comply with the orders of the authority, by not filing a written reply within the time allowed. It shows that the respondent is intentionally delaying the proceedings of the authority by non-filing of written reply. Therefore, in view of order dated 18.04.2024, the defence of the respondents was struck off.
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 based on these undisputed documents made by the complainant.

D. Jurisdiction of the authority

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

D.1 Territorial jurisdiction

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.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

8. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings regarding relief sought by the complainants.

E. I Direct the respondent to pay pre-EMI directly to the Bank (Financial Institution) as mentioned in the enclosed letter of builder (ATS).

9. In the present complaint, the complainants intend to continue with the project, and are seeking return of Pre EMI paid by the complainants to the financial institution on behalf of the respondent/promoter as the same was agreed to be paid by the respondent as per letter dated 23.10.2018. The relevant portion of

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the letter issued by the respondent/builder is reproduced hereunder for ready reference:

".....the Developer shall pay Pre Equated Monthly Instalment (Pre EMI) every month to the Buyer or directly to the bank as the case maybe, against the aforesaid apartment till the offer of possession is made by the Developer in terms of clause 7.1 of the Agreement for Sale and from the date of offer of possession notice the present scheme shall be treated as closed...."

10. Further, during the preceding dated 18.04.2024, the counsel for the respondent has stated before this Authority that they are ready to pay the Pre-EMI till the offer of possession. In view of the above, the respondent/builder is directed to return the pre EMI already paid by the complainants to the financial institution on behalf of the respondent and further, pay Pre EMI's/EMI till the offer of possession directly to the financial institution as per the agreed terms of the letter dated 23.10.2018.

E.II Direct the respondent to submit status of construction of the project till date.

E.III Direct the respondent to submit the date of possession of the unit.

E.IV Direct the respondent to submit details of latest ESCROW account of the project including credit and debit records.

11. Further as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, the respondent is directed to disclose the status of the completion certificate, date of physical possession of unit and details of escrow account of the project including credit and debit records to the complainant-allottees within a period of 30 days of this order.

H. Directions of the authority:

12. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation

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cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- I. The respondent/builder is directed to return the pre EMI already paid by the complainants to the financial institution on behalf of the respondent and further, pay Pre EMI's/EMI till the offer of possession directly to the financial institution as per the agreed terms of the letter dated 23.10.2018.
 - II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - III. The respondent is directed to handover the physical possession of the allotted unit of the complainant as per terms and condition of the buyer's agreement after obtaining the occupation certificate from the concerned department.
 - IV. The planning branch is directed to check the status of the project and in case of any violation of provisions of the Act of 2016, necessary penal proceeding to be initiated against the respondent.
13. Complaint stands disposed of.
14. File be consigned to registry.

Dated: 18.04.2024

HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram