

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 234 OF 2018**

1. ANIL RANA

.....Complainant(s)

Versus

1. M/S. ATS ESTATES PVT. LTD. & ANR.

THROUGH ITS DIRECTORS, REGD. OFFICE AT: 711/92,  
DEEPALI NEHRU PLACE,  
NEW DELHI-110019.

2. M/S. ATS INGRASTRUCTURE LTD.

REGD. OFFICE AT: 711/92, DEEPALI NEHRU PLACE,  
NEW DELHI-110019.

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER  
HON'BLE DR. INDER JIT SINGH, MEMBER**

**For the Complainant :** Mr. Aditya Parolia, Advocate  
: Mr. Nitin Chandran, Advocate  
: Ms. Sambul Ismail, Advocate

**For the Opp.Party :** Mr. Sandeep Thukral, Advocate

**Dated : 05 Jan 2023**

**ORDER**

1. Heard Mr. Aditya Parolia, Advocate, for the complainant and Mr. Sandeep Thukral, Advocate, for the opposite parties.
2. Anil Rana has filed above complaint, for directing the opposite party to (i) refund Rs.5768544/- with interest @18% per annum from the date of respective deposit till the date of actual payment, (ii) pay Rs.500000/-, as compensation for mental agony and harassment, (iii) pay Rs.100000/-, as litigation cost; and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case.
3. The complainant stated that M/s. ATS Estates Private Limited and M/s. ATS Infrastructure Ltd. (the opposite parties) were companies, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. M/s. ATS Infrastructure Ltd., who was owner of the project land, entered into development agreement dated 20.07.2007, with M/s. ATS Estates Private Limited, by which, the works of development and construction of the project and selling its unit were assigned to M/s. ATS Estates Private Limited (the opposite party). The opposite party launched a group housing project, in the name of "ATS Golf Meadows" at villages Sadhemajra and Madhopur, tehsil Dera Bassi, district S.A.S. Nagar, Mohali, in the year 2012 and made wide publicity of its facilities and amenities. The complainant booked a villa on 09.02.2012 and deposited booking amount of Rs.1900000/-. The opposite party allotted Villa no.-226, "ATS Golf Meadows-1", area 500 sq. yard, total sale price of Rs.188/- lacs and executed Buyer's Agreement in his favour on 09.03.2012. Under Payment Plan entire consideration was payable in 5 instalments. Last instalment was payable on offer of possession on 08.02.2013. The complainant deposited total amount of Rs.5768544/-. Clause-11(a) of the agreement provides that the opposite party will offer possession within 36 months from the date of allotment subject to timely payment of the instalments and force majeure reasons. Clause 11(c) provides a grace period of 120 days. Although due date of possession expired in September, 2015 but the opposite party did not offer possession. The construction was moving at very

slow pace and was not likely to be completed till 2020. Therefore, the complainant, vide email dated 04.05.2016, requested to cancel his allotment of villa No.226 and transfer his money for allotment of Plot No.115-116, "ATS Golf Meadows-1" but the opposite party did not respond. Then this complaint was filed on 23.01.2018, alleging deficiency in service.

4. The opposite party filed its written reply on 26.04.2018 and contested the matter. The opposite party did not dispute, booking of the villa, allotment of the villa No.226, execution of Buyer's Agreement dated 09.03.2012 and deposits made by the complainant. The opposite stated that allotment letter was issued on 21.07.2012 and received by the complainant on 23.07.2012 and the complainant has deliberately made false allegation in this respect. Annexure-1 of the agreement contained "Time Linked Payment Plan" under which Rs.6667750/- was required to be deposited till 14.05.2012. The complainant deposited Rs.19/- lacs, on 09.03.2012, Rs.1940052/-, on 01.08.2012 and Rs.1928492/-, on 31.07.2013 (total Rs.5768544/-) although till November, 2012, Rs.16067750/- was payable. The opposite party raised construction by expending Rs.58/- lacs. The complainant stopped payment of instalment as such the construction was not proceeded further. EDC was statutory charge. Delayed payment of EDC attracts 10% interest and 3% delayed penalty. The opposite party issued demand/reminders dated 05.06.2014, 05.09.2014 and 05.12.2014 but the complainant did not respond. The complainant was a rank defaulter in payment of instalment and failed to perform his obligation under the agreement. Clause 11(a) of the agreement was subject to timely payment of the instalment. The complainant was defaulter from very beginning as such his request to transfer his allotment into plot was not accepted. Terms & Condition No.5 of the booking application form and clause-5 of the agreement provides that 10% of Basic Sale Price would be earnest money which was liable to be forfeited. The opposite party has not committed any deficiency in service. The complaint is liable to be dismissed.

5. The complainant filed Rejoinder Reply and Affidavit of Evidence of Anil Rana on 26.10.2018. The opposite party filed Affidavit of Evidence of Kunwar Sammaan Prakash. The complainant filed short synopsis of the arguments.

6. We have considered the arguments of the parties and examined the record. All the terms and conditions were disclosed in the Application Form as such it cannot be said that the terms and conditions were one sided. Annexure-1 of the agreement contained "Time Linked Payment Plan" under which Rs.6667750/- was required to be deposited till 14.05.2012. The complainant deposited Rs.19/- lacs, on 09.03.2012, Rs.1940052/-, on 01.08.2012 and Rs.1928492/-, on 31.07.2013 (total Rs.5768544/-) although till November, 2012, Rs.16067750/- was payable. The opposite party issued demand/ reminders dated 05.06.2014, 05.09.2014 and 05.12.2014 but the complainant did not respond. The complainant was a rank defaulter in payment of instalment from very beginning and failed to perform his obligation under the agreement. Since the complainant was defaulter, he cannot allege deficiency in service against the opposite party. Clause 11(a) of the agreement was subject to timely payment of the instalment. Now the complainant demands for return of his money as such earnest money, which is 10% of Basic Sale Price would be liable to be forfeited under clause-5 of the agreement. In **DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda, (2020) 16 SCC 318**, held when interest is awarded as compensation then awarding additional compensation was not justified. In **Experion Developers Private Limited Vs. Sushma Ashok Shiroor, 2022 SCC OnLine SC 416**, held that 9% interest, in case of refund, is just compensation.

#### ORDER

In view of the aforesaid discussions, the complaint is partly allowed. M/s. ATS Estates Private Limited (opposite party-1) is directed to refund entire amount deposited by the complaint with interest @9% per annum from the date of respective deposit till its payment, within period of two months from the date of this judgment. M/s. ATS Estates Private Limited (opposite party-1) is entitled to deduct 10% of Basic Sale Price as earnest money, from the amount payable to the complainant. If the complainant has taken loan mortgaging the villa in question, M/s. ATS Estates Private Limited (opposite party-1) will be entitled to satisfy the loan of the bank first and return remaining amount to the complainant.

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**RAM SURAT RAM MAURYA  
PRESIDING MEMBER**

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**DR. INDER JIT SINGH  
MEMBER**