BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of filing of complaint: 16.07.2025
Date of Order: 13.10.2026

1. **Naresh Pal Singh**
2. **Geeta Singh**

Both R/o: 307 Ganpati Heights, Mata Road, Near Bus Stand, Gurgaon Haryana-122001 — **Complainants**

Versus

ATS Real Estate Builders Private Limited
Regd. Office at: 711/92, Deepali, Nehru Place, New Delhi-110019 — **Respondent**

CORAM:

Shri Arun Kumar — **Chairman**

APPEARANCE:

Shri Pankaj Kumar Yadav (Advocate) — Complainants
Shri Gaurav Rawat (Advocate) — Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

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 and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of project	ATS Marigold
2.	Nature of project	Group Housing
3.	Location of project	Sector-89-A, Village- Harsaru, Tehsil & District Gurugram, Haryana
4.	DTCP License	License no. 87 of 2013 Dated-11.10.2013
5.	RERA Registered	Registered Vide registration no. 55 of 2017 Dated-17.08.2017
6.	Welcome Letter	03.11.2020 (As on page no. 40 of complaint)
7.	Permission to Mortgage	24.11.2020 (As on page no. 41 of complaint)
8.	Agreement for Sale between complainants and the respondent	19.11.2020 (As on page no. 42 of complaint)
9.	Tripartite Agreement	24.11.2020 (As on page no. 64 of complaint)
10.	Unit no.	4191, Floor-19th, Tower No.-4 (As on page no. 26 of complaint)
11.	Unit Area	1750 sq. ft [Super Area] (As on page no. 26 of complaint)
12.	Possession clause	***7.POSSESSION OF THE APARTMENT FOR RESIDENDIAL USAGE*** ***Clause 7.2*** *The developer shall Endeavour to complete the construction of the Apartment within* ***42 (forty-two) months from the date of this Agreement, with the grace period of 6 (six) months*** *i.e., ("Completion date"), subject always to timely payment of all charges including the basic sale*

		price, stamp duty, registration fees and other charges as stipulated herein. **[Emphasis supplied]** (As on page no. 38 of complaint)
13.	Due date of Possession	19.11.2024 [As per clause 7.1 of calculated 42 months from date of execution of Buyer's Agreement plus 6 months grace period]
14.	Payment plan	Possession Linked (As on page no. 63 of complaint)
15.	Sale Consideration	Rs.96,25,000/- (As on page no. 63 of complaint)
16.	Amount paid by the complainants	Rs.10,10,625/- (As on page no. 68 of complaint)
17.	Reminder Letters dated	15.12.2020 (As on page no. 47 of reply) [**Note**: An outstanding of Rs.20,21,252/- was mentioned in the demand letter] 21.12.2020 (As on page no. 49 of reply) [**Note**: An outstanding of Rs.20,21,252/- was mentioned] 02.01.2021 (As on page no. 51 of reply) [**Note:** An outstanding of Rs. Rs.20,21,252/- was mentioned] 02.02.2021 (As on page no. 53 of reply) [Note: An outstanding of Rs.20,21,252/- was mentioned]
18.	Final Notice cum Termination letter	02.02.2021 (As on page no. 53 of reply) [Note: An outstanding of Rs.20,21,252/- was mentioned]

19.	Agreement to sale between Chetan Wadhwa and the respondent (Third-Party)	05.05.2021 (As on page no. 76 of reply)
20.	Occupation certificate	16.06.2023 (As on page no. 111 of reply)
21.	Offer of possession in favor of Chetan Wadhwa	24.03.2024 (As on page no. 108 of reply)

B. Facts of the complaint:

3. That the complainants have made following submissions:

i. The Real Estate Project named "ATS Marigold", which is the subject matter of present complaint, is situated at Sector-89A, Gurugram, Haryana, therefore, the Hon'ble Authority do have the jurisdiction to try and decide the present complaint.

ii. The respondents had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondents while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainants that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

iii. The respondents were very well aware of the fact that in today's scenario looking at the status of the construction of housing as well as commercial projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the

agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing the same. Respondents, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and the consumer will not go through the hardship of paying rent along-with the instalments of loan like in the case of other builders in market.

iv. The respondent is in right to exclusively develop, construct and build residential/commercial building, transfer or alienate the unit's/floor/space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc. in favour of the allottees.

v. On the assurances given by the respondent as well as their agents, the complainants was much influenced with the assurance conveyed by the respondents through their wide publicity and the complainants booked an independent floor in the said project "Signature Global Park 5" being developed & constructed by the respondent. It is pertinent to mention here that the complainants booked their individual floor.

vi. On dated 20-10-2020, the complainant booked a unit in their above said project and at the time of booking/ registration, the complainants have paid booking amount. At the time of booking of the unit, the officials of the respondent duly assured the complainant that the respondent would deliver the physical possession of the above-mentioned unit till mid of 2 September 2022.

vii. A total amount of Rs. 10,10,625/- has been paid by the complainant to the respondent in respect of the above said flat/unit. All the negotiations before the booking of the unit and at the time of making

payment to the respondent in the shape of cheques/DD/bank transfer, the complainant was lured by respondent to invest in the project on the pretext that delivery of the apartment will be done till July, 2022. As per clause no. 7.1 of the agreement to sale, the possession of the unit will be handed over to the complainant till Sept, 2022.

viii. The complainant paid the amount as per the plan opted by the complainant but when the complainant visited the spot, the construction work was stopped by the respondent and the complainant waited for some time but no work on the site was resumed and still the project is yet to be completed. According to clause 7.1 of the agreement between the parties, the respondents were supposed to deliver the possession of the said flat/unit till Sept 2022 but till today no possession has been offered by the respondent company despite the fact that more than 57 months have been passed.

ix. The complainant has made several visits to the respondent office and made several requests to the company for delayed possession charges but there has been no response.

x. Thereafter, the complainant allow him to pay the balance amount but the respondents avoided the matter on one pretext or the other. The respondent has ignored the requests of the complainant as raised above. The terms of the agreement are completely one sided and favoured only the company/respondent and the same has been formulated in a way that the respondent/ builder can take undue advantage of their dominant position at the site where the project is being developed and harass the complainants into making payments

even if the same was not due depending on the stage of construction of the project.

xi. The complainant have paid more than 10% of the total amount towards the consideration of the unit which includes the amounts of the entire due instalments, despite the fact that till date no facility has been provided till date, The respondent, on the other hand, are enjoying the money collected from the complainant by putting it for their own use or other use by diversifying.

xii. The complainant has been duped and befooled in the name of residence which could never be brought to reality by the respondent and the complainant booked the above said flat for his residential purposes and had invested his hard-earned money in the respondent's project only but more than 57 months has been passed and the hard earned money of the complainant is blocked. In this way the respondent cheated the complainant and hence being aggrieved has filed this complaint.

xiii. Hence, the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

i. Direct the respondent to restore the booking of the complainants.

ii. Direct the respondent to handover the actual physical possession of the residential apartment.

iii. Direct the respondent to pay the delayed interest from the date of agreement to till the date of realization.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:

i. The present complaint, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 *(hereinafter referred to as the*

"RERA Act") read with Rule 28(1)(a) of the Haryana Real Estate (Regulation and Development) Rules, 2017, is not maintainable and is liable to be dismissed, as the respondent has not violated any of the provisions of the Act.

ii. The allotment made in favour of the complainants was duly cancelled on 02-02-2021, even before filing of the present complaint. The apartment buyer agreement dated 19.11.2020 along with the right and interests of the complainants in the said flat was terminated on the same day, as a result the complainant ceased to be an allottee of the project and is not covered under the definition of "Allottee" as provided under Section 2(d) of the RERA Act. Hence, the complainant does not have the locus standi to initiate proceedings under RERA Act, and the present complaint is liable to be dismissed on this ground alone.

iii. The reliefs claimed by the complainants are *ex facie* not maintainable under Section 18 of the RERA Act. Though the complainant seeks restoration of booking, physical possession (or alternate unit), and interest/DPC @ RERA rate on Rs.10,10,625/- for 57 months, these are unlinked to any subsisting obligation post valid termination dated 02-02-2021 and re-allotment/possession to Chetan Wadhwa. No challenge to cancellation exists claims are standalone/barred by delay (5+ years), beyond jurisdiction under Section 31 read with Section 18.

iv. The apartment buyer agreement was made by the original allottees and the respondents and, as such, the parties are bound by the terms and conditions mentioned therein. The said agreement was duly signed by complainant after properly understanding each and every term and condition contained therein including the consequences and repercussions thereof. Complainant was neither forced nor influenced by the respondent to submit the application and act further, accept the

allotment of the said unit and make further payments. It was complainants who after understanding the clauses and the terms and conditions signed and submitted the application and agreed to and opted for a specific payment plan in their complete senses.

v. The flat no. 4191, is a part of residential group housing project known as "ATS Marigold" Sector-89A, Gurugram, Haryana and has been developed by the respondent on piece of land situated at Sector-89A, Gurugram, Haryana, under the License, granted by the Town and Country Planning Department, Chandigarh, Haryana (DTCP).

vi. The allotment was terminated on 02-02-2021 vide due to continuous payment defaults after minimal payments of Rs.10,10,625/- against total sale consideration of Rs.96,25,000/-. No possession was ever offered to complainant; thereafter unit re-allotted to Chetan Wadhwa with possession letter dated 23-03-2024. Therefore, no delay attributable to respondent exists.

vii. As per the agreed apartment buyer agreement dated 19-11-2020, it was the complainant's contractual obligation to make timely payments per payment plan. Instead of performing its obligations despite reminders dated 15-12-2020, 21-12-2020, 02-01-2021, the complainant defaulted and forced termination. Hence, the complainant is not entitled to DPC/interest/possession/restoration as sought from this Hon'ble Authority.

viii. The project construction is already completed. The competent authority has already granted occupancy certificate(s) for the project.

ix. As even after the termination letter dated 02-02-2021, the complainant did not approach for any relief, the respondent proceeded with re-allotment to new buyer. No refund processing was required as per terms of Agreement since complainant had paid only -10%

consideration against total ₹96,25,000/- and remained in continuous default.

x. Complainants in the present complaint has not challenged the termination letter dated 02-02-2021 sent by the respondent. Moreover, complainant approaches 5+ years after termination and re-allotment, having no subsisting rights.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

8. 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.

E.II Subject matter jurisdiction

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the

case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on relief sought by the complainants:

F.I Direct the respondent to restore the booking of the complainants.

11. The complainants were allotted apartment bearing No. 4191, on the 19th floor of Tower No. 4, admeasuring 1750 sq. ft. (super area), in the project "ATS Marigold", Sector-89A, Gurugram, Haryana, vide agreement for sale dated 19.11.2020, against a sale consideration of Rs.96,25,000/-. The complainants paid a sum of Rs.10,10,625/- towards the sale consideration. However, the respondent terminated the allotment on 02.02.2021 on account of alleged payment defaults, after issuing reminders dated 15.12.2020, 21.12.2020 and 02.01.2021, demanding an outstanding amount of Rs.20,21,252/-.

12. The Authority observes that the complainants have sought restoration of the booking; however, the respondent has contended that the allotment was terminated on 02.02.2021 and that the subject unit was subsequently agreed to be sold to a third party, namely Chetan Wadhwa, vide agreement to sell dated 05.05.2021. The respondent has also placed on record the occupation certificate dated 16.06.2023 and the offer of possession issued in favour of the subsequent purchaser on 24.03.2024.

13. In view of the aforesaid facts and circumstances, the Authority observes that the complainants have paid a sum of Rs.10,10,625/- against the total sale consideration of Rs.96,25,000/-, which is approximately 10.5% of the total sale consideration. The complainants failed to make further payments in accordance with the agreed payment plan, pursuant to which the respondent terminated the allotment on 02.02.2021 and subsequently created third-party rights in respect of the subject unit. In view of the payment default on the part of the complainants and the subsequent creation of third-party rights, the Authority is of the considered view that the termination of the allotment is valid. Accordingly, the relief seeking restoration of booking is not maintainable and stands rejected.

F.II Direct the respondent to handover the actual physical possession of the residential apartment.

F.III Direct the respondent to pay the delayed interest from the date of agreement to till the date of realization.

12. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

13. As per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. In the present complaint, despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues and the respondent has obtained the occupation certificate on 16.06.2023.

14. The Authority observes that the allotment of the subject unit was validly terminated by the respondent on 02.02.2021 on account of the complainants' failure to make payments in accordance with the agreed payment plan. It is further observed that third-party rights have subsequently been created in respect of the subject unit. Consequently,

the complainants are not entitled to seek physical possession of the subject apartment or delayed possession interest, as the contractual relationship concerning the allotment stood terminated. Accordingly, both reliefs, as prayed for, are rejected.

15. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainants have sought the relief of the delayed possession charges while filing of the instant complaint or during proceeding. It is pertinent to note here that there is nothing on record to show that the amount has been refunded back to the complainant. The Authority observed that rule 28(2) of the rules provides that the Authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The Authority will not go into these technicalities as the Authority follows the summary procedure and principal of natural justice as provided under section 38 of the Act of 2016, therefore the rules of evidence are not followed in letter and spirit. Further, it would be appropriate to consider the objects and reasons of the Act which have been enumerated in the preamble of the Act and the same is reproduced as under:

> *"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or*

orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto"

16. Furthermore, the issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Indian Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Private Limited decided on 26.07.2022,*** held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

> ***"5. Amount Of Earnest Money***
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view* ***that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount*** *of the real estate i.e. apartment /plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw*

from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

17. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainant-allottee or cancellation by the builder, however, that was not done. So, the respondent is liable to refund the amount received from the complainant i.e., Rs.10,10,625/- after deducting 10% of the basic sale consideration along with interest at the rate of 10.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of complaint i.e., 16.07.2025 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority:

18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i) The respondent/promoter is directed to refund the amount i.e., Rs. Rs.10,10,625/- to the complainants after deduction of 10% of basic sale consideration of as earnest money along with interest at the rate of 10.80% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of complaint i.e., 16.07.2025 till the actual date of realization of amount.

ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.

20. File be consigned to the registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.10.2026

HARERA
GURUGRAM