

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

<b>Complaint no. :</b>	<b>1171 of 2022</b>
<b>Date of filing complaint:</b>	<b>24.03.2022</b>
<b>Date of Decision:</b>	<b>25.08.2023</b>

<b>1. Smt. Vinod Kumari</b> <b>2. Sh. Balwant Rai Madanpotra</b> Address: Flat no. 801, Jhelum Apartments, Plot no. 8, Sector-5, Dwarka, New Delhi-110075	<b>Complainants</b>
Versus	
M/s Signature Infrabuild Pvt. Ltd. <b>Regd. office:</b> 101, Tower A, Signature Towers South City-1, Gurugram-122001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Pramod Kumar Bhardwaj	Complainants
Sh. Niraj Kumar 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Global Aspire" at sector 95, Gurgaon, Haryana
2.	Nature of the project	Affordable Group Housing
3.	Project area	5.1125 acres
4.	DTCP license no.	73 of 2019 dated 04.07.2019 valid upto 03.07.2024
5.	RERA Registered/ not registered	Registered Vide 69 of 2019 dated 14.11.2019 upto 30.10.2023
6.	Unit no.	A-007, Ground Floor, Tower A (page no. 15 of complaint)
7.	Unit area admeasuring (super area)	594.065 sq. ft. (page no. 15 of complaint)
8.	Date of allotment	09.07.2020 (page no. 15 of complaint)
9.	Date of builder buyer agreement	Not executed
10.	Surrender email by complainants	23.07.2020 (page no. 16 of complaint)



11.	Pre cancellation notice by respondent	27.08.2020 (page no. 20 of complaint)
12.	Pre intimation letter	02.12.2020 (Page no. 21 of complaint)
13.	Reminders	23.01.2021, 08.02.2021 (page no. 22-23 of complaint)
14.	Cancellation notice by respondent	10.04.2021 (Page no. 30 of complaint)
15.	Legal notice for refund by complainants	05.11.2021 (page no. 35 of complaint)
16.	Approval of building plans	30.09.2019 (as per project details)
17.	Environment clearance	Not Provided
18.	Possession clause	1. iv. All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environment clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. (as per affordable housing policy).
19.	Due date of possession	30.09.2023 (as per possession clause)
20.	Total sale consideration	Rs. 24,17,340/- which is 20 time of the application money given by the allottee i.e., Rs. 1,20,867/-
21.	Amount paid by the complainants	Rs.1,20,867/-



		[as per allotment letter on page no. 15 of complaint]
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That both the complainants, as joint applicants, had applied for allotment of a residential flat in the affordable housing scheme of the respondent namely "Signature global - aspire - sector-95, Gurgaon and paid an amount of Rs.1,20,867/- through cheque on 02-01-2020.
4. That the respondent allotted a flat bearing number flat no. A-007 on 04.07.2020. Thereafter on 09.07.2020 respondent issued demand cum allotment letter for depositing an amount of Rs.4,89,509/- till 24-07-2020.
5. That the complainants surrendered allotted unit to the respondent on 23.07.2020 informing the respondent about it on their email ID with a request to refund the application money.
6. That the respondent ignored the request dated 23.07.2020 made by the complainants for refund of application money vide their e-mails. Instead, they started to press the complainants illegally for payment of more money by gradually adding further instalments, interest and taxes vide their letters dated 27.08.2020, 02.12.2020, 23.01.2021, 08.02.2021 and 23.02.2021 although the respondent ought to have refunded application money immediately on receipt of the complainant's email on 23.07.2020 itself but the respondent kept



complainants' money with themselves in utter violation of law and equity.

7. That the complainants are senior citizens, but they had no choice and per force complainant no. 2 visited the respondent personally in the last week of February, 2021 to know the status of the refund. Instead of acting on emails sent to the respondent for refund on 23.07.2020, the complainant no. 2 was given 2 forms regarding surrender and a checklist of documents for submission again.
8. That the respondent had sent an email to the complainants on 10.08.2020 with the heading, "non-contactable" and sent to the complainants another email after seven (7) months on 06.03.2021 informing that the surrender could only be considered on the basis of the physical documents that the complainants had shared dated 4th March 2021. It is clearly a ploy to misappropriate application money of the complainants as the respondent could have intimated that requirement on 23.07.2020 itself when the allotment was surrendered to them but the respondent kept on lingering the refund and sent seven demand letters demanding further instalments.
9. That the respondent kept the application money of the complainants with malafide intention which became manifest on 06.03.2021 when the respondent informed the complainants about an exorbitant deduction as penalty, vide their email dated March 06, 2021.
10. That the complainants received a shock on receipt of above e-mail dated 06.03.2021 and visited the respondent personally again on 24-03-2021, for the third time, to discuss refund. On that day, Ms. Ekta Arora of the respondent's office told the complainants that almost all of entire



application money had been forfeited and she cited above-said flimsy grounds.

11. That the complainants wrote emails to the respondent dated 17.07.2021, 10.08.2021, 23.08.2021 & 06.09.2021 requesting again and again for refund of application money but none of them was replied to.
12. That the complainants emailed on 17.07.2021 making it clear to the respondent again that the complainants had applied for surrender well within stipulated time and there was no delay from their side. It was again requested in the email that application money need to be refunded to the complainants in full. However, the respondent did not pay any heed to requests of the complainants.
13. That the complainants sent a legal notice dated 05.11.2021 for refund of application money but no reply is received. The complainants sent another legal notice dated 26.12.2021 for refund of application money and shown their willingness to settle dispute amicably with the respondent but no reply is received.

**C. Relief sought by the complainants:**

14. The complainants have sought following relief(s):
  - (i) Direct the respondent to refund the amount of Rs. 1,20,867/- along with interest.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

15. That the complaint had applied for allotment of flat under the affordable housing policy 2013 vide application dated 29.12.2019 and was allotted flat no. A-007 vide allotment held on 04.07.2020.



16. That in terms of the application the complainants were to make initial payment of Rs.1,20,867/- being the 5% of the cost of the apartment (booking amount) and thereafter the complainants were to deposit a 20% of the cost of the flat at the time of allotment and subsequent payment was to have been made in terms of the payment plan as per schedule.
17. That the complaint failed to make any further payment against the cost of the flat despite several demands having been made by the respondent.
18. That the complainants finally executed surrender letter alongwith undertaking for surrender of flat on 04.03.2021.
19. That the clause 22 and clause 23 of the terms and conditions of the application permits the developer/promoter to deduct Rs.25,000/- plus from 1% to 5% of the total cost of the flat depending on the period of surrender from the date of commencement of project.
20. That the said policy also permits the developer/promoter to deduct interest on delayed payment and applicable taxes thereon and thereafter the balance amount was liable to be refunded to the complainants.
21. That as the complainants has surrendered the allotted flat within 2 years of the date of commencement of the project, in terms of clause 23 and also in accordance with Affordable Housing Policy 2013 by Notification No.PF-27/15922 dated 05.07.2019 the developer/promoter is entitled to deduct Rs.29,500/- ( Rs.25,000/- + GST), the interest accrued on delayed payment and 3% of the total cost of the flat.

22. 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 on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

23. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

24. 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**

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

26. 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 complainants at a later stage.

**F. Entitlement of the complainants:**

**F. I** Direct the respondent to refund the amount of Rs. 1,20,867/- along with interest.

27. The complainants were allotted a unit no. 007 on Ground floor, in tower/block- A, in the project "Global Aspire" by the respondent/builder for a total consideration of Rs. 24,17,340/- under the Affordable Group Housing Policy 2013 vide offer of allotment letter dated 09.07.2020. No buyer's agreement was executed between the parties. The possession of the unit was to be offered with 4 years from approval of building plans or from the date of environment clearance whichever is later. The due date of possession was calculated from date of approval of building plans i.e., 30.09.2019, as per policy, of 2013.
28. The complainants paid a sum of Rs.1,20,867/- out of the total sale consideration. Further, the complainants had placed an email dated 23.07.2020 on page no. 16 of the complaint wherein they surrendered the unit and hereby seeking refund of the paid up amount.
29. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:



*Clause 5(iii) (h) of the affordable housing policy*

*"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount to be forfeited</b>
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

30. Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".

31. Since the surrender of the unit by the complainants were done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the building plans was approved on 30.09.2019 and no date of environment clearance is mentioned so the commencement date will be considered as date of approval of building plans i.e., 30.09.2019 and hence, the same would be considered as date of commencement of project.
32. Accordingly, the details of the amount to be refunded as per the policy in each case is as under:

<b>Date of surrender</b>	<b>Forfeiture of amount in addition to Rs.25,000/-</b>
23.07.2020	Respondent is entitled to forfeit 1% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 and the request for surrender is within 1 year from the date of commencement of project.

33. The respondent/promoter is directed to refund the paid-up amount after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

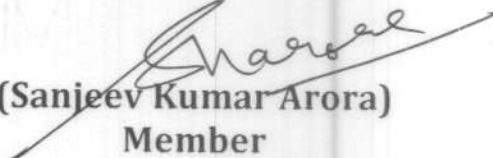
**G. Directions of the Authority:**

34. 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 paid-up amount of Rs.1,20,867/- after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @10.75% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.
- 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.

35. Complaint stands disposed of.

36. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 25.08.2023**