

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

**Complaint no. : 5767 of 2022**  
**Date of first hearing: 15.09.2022**  
**Date of decision : 22.12.2023**

Abhinav Pandey R/o - 71D, Shri Ram Nagar Colony, Padari Bazar Road, Shivpuri, Gorakhpur-273014	<b>Complainant</b>
Versus	
Signature Global Developers Pvt. Ltd., Office: - Unit no. 1308, 13 <sup>th</sup> Floor, Dr. Gopal Das Bhawan, 28-Barakhamba Road, New Delhi - 110001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Rudra Shish Bhardwaj	Complainant
Shri Niraj Kumar	Respondent

**ORDER**

1. The present complaint dated 15.09.2022 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 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 unit details, 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	"Signature Global City" at Village Gadauli Kalan, sector 37D, Gurgaon, Haryana
2.	Nature of the project	Deen Dayal Jan Awas Yojma Affordable Plotted Housing Policy
3.	Project area	20.589 acres
4.	Rera Registered/Not Registered	Registered Vide 30 of 2021 dated 13.07.2021 upto 30.04.2023
5.	DTCP License No.	08 of 2021 Dated 05/03/2021
6.	Unit no.	K-607, 6th Floor, Tower K (page no. 19 of complaint)
7.	Unit admeasuring	603.677 sq. ft. (page no. 19 of complaint)
8.	Welcome Letter	15.03.2022 (Page no. 10 of complaint)

9.	Date of allotment	15.03.2022 (page no. 13 of complaint)
10.	Date of builder buyer agreement	Not Executed
11.	Surrender email by complainant	05.05.2022 (page no. 25 of complaint)
12.	Possession clause	<i>16. That the company shall complete the construction of the above independent floor within 24 months from the date of launch + Grace Period of 3 months.</i>
13.	Due date of delivery of possession	15.06.2024 (Calculated from the date of allotment including grace period of 3 month)
14.	Basic Sale Price	Rs. 63,12,241/- (As per application form on page no. 14 of reply)
15.	Total sale consideration	Rs 66,71,741/- (As per application form on page no. 14 of reply)
16.	Total amount paid by the complainant	Rs.7,90,000/- (as per receipts of payments annexed in file)
17.	Occupation certificate	Not obtained

18.	Offer of possession	Not offered
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### B. Facts of the complaint

3. That the complainant on believing the representations made by respondent showed their interest to purchase the unit. On 15.03.2022 complainant made payment Rs.1,50,000/- as asked by the respondent in order to book the unit.
4. Moreover, on very same day i.e 15.03.2022 respondent issued a "demand pre-intimation letter" according to which the complainant has to make payment of Rs.6,30,256/- i.e 9% of total cost of unit. Which shall be paid by 15.04.2022 and after 60 days of submission of form or allotment (whichever is earlier) has to make further payment of Rs.11,20,456/- i.e 11% more. Which cumulatively becomes 25% of total consideration for the flat. This fact can be verified by the email dt 15.03.2022 sent by the respondent. Hence, this illegal act of respondent itself shows the ill will of the respondent even before entering into the contract.
5. That the complainant booked a unit by making all such payment as was demanded by the respondent for the allotment of the respective unit. Booking letter and demand letter both dt 15.03.2022 was issued by respondent to the complainant and all other similarly situated persons.
6. That the respondent was not legally entitled to receive more than 10% of total cost of unit without entering into builder buyer agreement (hereinafter BBA). However, he raised illegal demand of further 11% on 60th day without entering into BBA.

7. That the above said act of collecting money from the complainant on promise of executing BBA in the near future amounts to cheating which is an act of willful malafide omission and commission.
8. That the manager asked the complainant to write an email stating that he (allottee) himself wants to cancel the booking and to write that he had made all payments on time but due to unstable financial condition he wants to cancel the booking and in this gimmick the complainant accordingly wrote mail that due to bad financial condition he wants to back out from the project and also asked for refund of the amount paid i.e Rs.7,90,000/-.
9. However, it is open to the buyer to back out from the project from entering into the BBA. Moreover, the promoter cannot forfeit the amount given before BBA. Also, further rights and duties of allottees and promoter are established through BBA execution which was never executed. Hence, any such act of promoter to retain the money received by way of booking is arbitrary, unlawful and on own whims and fancies.
10. That on the email of complainant for refund and cancellation the respondent asked for returning the original copy of allotment letters. Mere intention behind same to make complainant destitute and helpless in litigation. This shows the malafide intention of respondent. Hence this act of non-providing of huge amount received i.e Rs.7,90,000/- lead to present cause of action. Hence, this complaint.
11. That the complainant reserves right to cancel his booking if he wishes to not to pursue in the project. However, promoter asked to deduct exorbitant amount of 10% TCP alongwith 18% GST. Moreover, he can exercise his right to cancel booking any time before entering into the BBA.

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

12. The complainant has sought following relief(s):

- a) Direct the respondent to refund the amount received i.e, Rs. 7,90,000/- with interest @ 18% p.a.
- b) Direct the respondent to give cost of litigation to the tune of Rs. 1,50,000/- @ 18% interest from the filing of complaint

**D. Reply by the respondent**

13. That the complaint had booked unit no.37D-T43-1F, in Signature Global City 37D, Gurgaon on making part payment of booking amount i.e. Rs.1,50,000/- on 15.03.2022 against which welcome letter cum allotment letter dated 15.03.2022 was issued to the complainant. The total consideration of the unit was Rs.66,71,741/- excluding stamp duty charges,, EEC etc and GST was payable extra.
14. That complainant categorically agreed in duly submitted application form that upon the complainant's request for cancellation without the fault of the respondent, earnest money which is 10% of the total price would be forfeited by the respondent.
15. That complainant before submitting the duly filled application, admittedly not only visited the project site but also made extensive enquiry about proposed terms and conditions of allotment. Thereafter being satisfied with proposed terms and conditions of allotment, complainant booked the unit.
16. That in terms of the allotment letter dated 15.03.2022 the complainant was to make payment of the balance amount as per the schedule attached with the allotment letter in the following manner:

TLP 20 MONTH

Sr. No.	Particulars	%
1	On Booking/Allotment	100000
2	Within 30 Days from Booking Date	9%
3	Within 60 Days from the Booking or Clearance of Cheque (whichever is earlier)	25%
4	Within 8 Months from the Booking or Clearance of Cheque (whichever is earlier)	25%
5	Within 14 Months from the Booking or Clearance of Cheque (whichever is earlier)	25%
6	Within 20 Months from the Booking or Clearance of Cheque (whichever is earlier)	20%
7	On Offer of Possession	5%

17. The complainant was required to pay Rs.6,30,256/- before 15.04.2022 being the 9% of the cost of the flat against which the complainant paid a sum of Rs.6,40,000/- dated 11.04.2022.
18. That before the BBA could be executed, the complainant vide email dated 05.05.2022 expressed its willingness to cancel the booking of the said unit. The said email was replied by the respondent vide email dated 07.05.2022 thereby informing the complainant that in the event of cancellation of the unit, 10% total cost price of the unit along with 18% GST shall be deducted from the amount paid till date and the balance if any shall be refunded to the complainant and the respondent also reminded the complainant again vide email dated 12.05.2022.
19. That the complainant thereafter neither has paid any amount towards the cost of the unit booked nor is coming forward to execute the BBA. The

respondent finding no option has cancelled the unit and the amount so deposited in terms of the application form has been forfeited.

20. Copies of all the relevant documents have been duly 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 submissions made by the parties.

### **E. Jurisdiction of the authority**

21. 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**

22. 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**

23. The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

24. 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.
25. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section*

*72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

26. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant.**

**Relief sought by the complainant:** The complainant had sought following relief(s):

- i. Direct the respondent to refund the amount received i.e, Rs. 7,90,000/- with interest @ 18% p.a.
27. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

**"Section 18: - Return of amount and compensation**

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every**

*month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

28. The complainant booked a unit in the respondent's project and was allotted unit no. K-607, 6th Floor, Tower K vide allotment letter dated 15.03.2022. The BBA was not executed between the parties.
29. It is observed that the complainant vide letter dated 05.05.2022 requested the respondent to refund the entire amount paid by him. The relevant clause for the surrender by allottee is under the application form which is reproduced hereunder for ready reference:

*I/We agree to abide by all the prescribed terms and conditions set forth in the provisional Allotment Letter and the Agreement and to comply with all the statutory requirements as applicable and adhere to all the applicable laws. I/We also agrees to abide by all the General Terms & Conditions of booking as enclosed hereto. I/We agrees that upon my/our request for cancellation without fault of the Company, Earnest money which is 10% of the total price would be forfeited.*

30. The issue w.r.t. deduction of earnest money arose before the hon'ble Apex Court of the land in cases of ***MaulaBux V/s Union of India (1970)1 SCR 928 and Sirdar KB Ramchandra Raj Urs V/s Sarah C Urs (2015) 4SCC 136*** and followed by NCDRC in cases of ***Ramesh Malhotra V/s EMAAR MGF Land Limited and Mr. Saurav Sanyal V/s M/s IREO Pvt. Ltd.*** decided on 12.04.2022 and wherein it was held that 10% of the basic sale price is reasonable amount to be forfeited in the name of "earnest money".
31. Therefore, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which states that-

**"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."*

32. Keeping in view the aforesaid legal provisions, the respondent is directed to refund the paid-up amount of Rs. 7,90,000/- after deducting 10% of the sale consideration of the unit being earnest money within 90 days along with an interest @ 10.85% p.a. on the refundable amount, from the date of surrender i.e., 05.05.2022 till the date of its payment.
- ii. Direct the respondent to give cost of litigation to the tune of Rs. 1,50,000/- @ 18% interest from the filing of complaint.
33. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

#### **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 promoter as per the function entrusted to the authority under section 34(f):

- i) The respondent/builder is directed to refund the paid-up amount of Rs. 7,90,000/- after deducting 10% of the sale consideration being earnest money along with an interest @10.85% p.a. on the refundable amount from the date of surrender i.e., 05.05.2022 till date of its payment.
- 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 registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 22.12.2023**