

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

Complaint no. : 670 of 2023  
Order reserved on: 02.11.2023  
Order pronounced on: 21.12.2023

Kshitij Jain

**R/o:** The IVY, Court C, Apartment no. 601, Sushant  
Lok1, Sector 28, Gurugram, Haryana.

**Complainant**

Versus

M/s Signature Global Pvt. Ltd.

**Regd. Office:** Unit No. 1309, 13<sup>th</sup> floor, Dr. Gopal Das  
Bhawan, 28 Barakhamba Road, New Delhi-110001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Nishant Jain (Advocate)

Sh. Neeraj Kumar (Advocate)

Complainant  
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 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 the parties.

**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:

S.no.	Particulars	Details
1.	Name of the project	"The Millennia, Sector 37 D Gurugram
2.	Nature of project	Affordable group housing
3.	Rera Registered/Not registered	Registered 03 of 2017 dated 20.06.2017
4.	Unit no.	1204, tower - 5, 12 <sup>th</sup> floor [page no. 51 of complaint]
	Area admeasuring	552.360 Sq. ft. (carpet area) 79.653 Sq. ft. (balcony area) [Page no. 37 of complaint]
5.	Date of flat buyer agreement	19.02.2018 (Page no. 33 of complaint)
6.	Possession clause	<b>5. Possession</b> 5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allotee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allotee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Developer shall offer possession of the Said Flat to the Allotee(s) within a period of 4 (four) years from the date of





		<i>approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i>
7.	Date of building plan approval	08.06.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
8.	Date of environmental clearance	21.08.2017 (taken from another case CR/5675/2022 decided on 21.09.2023 of the same project)
9.	Due date of possession	21.02.2022 (Calculated from the date of grant of EC being later including grace period of 6 months in lieu of Covid-19)
10.	Basic sale consideration	Rs.22,49,267/- (Page no. 03 of reply)
11.	Total amount paid by the complainant	Rs.8,21,041/- (as per SOA and payment receipts page 103-117 of complaint) (*Note: inadvertently mentioned Rs.8,26,541/- vide proceedings dated 02.11.2023 and 21.12.2023)
12.	Payment reminders	24.06.2021, 12.07.2021 (Page 10-11 of reply)
13.	Pre cancellation notice	22.07.2021 (Page 12 of reply)
14.	Cancellation notice	05.08.2021 (Page no. 13 of reply)
15.	Newspaper Publication	21.08.2021 (Page no. 14 of reply)

### B. Facts of the complaint

- That the complainant visited the project residential project namely "The Millennia" and booked a residential unit no. 5-1204 block/tower 5 carpet area 552.360 sq. ft. 12<sup>th</sup> floor and balcony area 79.653 sq. ft. in the said



project situated at Village Gadoli Khurd and Gadoli Kalan-Sector 37D. Gurugram, Haryana being developed by respondent. The agreement to sell was executed between the parties on 19.02.2018

4. That the complainant made the payment to the respondent on different dates through cheques/online payment mode i.e. Rs.1,12,463 vide cheque no. 001204 dated 14.08.2017, Rs.5,08,578/- vide receipt no. MRMI/05905/17-18 dated 17.11.2017 and Rs.2,00,000/- vide cheque 048176 dated 20.01.2019. The total payment of Rs.8,26,541/- was paid to the respondent against the total sale consideration of Rs. 22,49,267/-.
5. That the complainant was in utter shock, when he got to know that the construction of the project has been stopped and further tried to contact the Gurugram office of the respondent company.
6. That after the wide spread of covid-19, the State Government had initiated the lockdown in the city due to that complainant suffered huge loss in his work even a lot money had spent in the treatment of his family members during the covid-19. The complainant has to use his funds to re-establish his business. Now the complainant does not have any funds to continue with the said unit and seeks for refund of the entire paid-up amount along with interest.

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

- a. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

**D. Reply by the respondent**

The respondent has contested the complaint on the following grounds:

7. That the said project has been developed by the respondent as per the terms and conditions of "Affordable Housing Policy, 2013" of the Govt. of Haryana, and the complainant was allotted a flat bearing no. 5-1204 having carpet



area admeasuring 552.360 sq. ft and balcony area 79.653 sq. ft. together with the two-wheeler open parking site.

8. That subsequently to the allotment of the said flat the complainant executed a builder buyer agreement dated 19.02.2018 wherein the complainant agreed to make payment as per the terms of the builder buyer agreement and the respondent agreed to handover the possession of the flat as per the terms and conditions as contained therein. The total cost of the flat was Rs.22,49,267/- plus GST and miscellaneous charges were payable extra.
9. That the complainant paid a sum of Rs.1,12,463/- at the time of filing application for allotment of flat and the balance payment was to be made in terms of the BBA as under:

Sr. No.	Particulars	% of total cost
1	At the time of application	5%
2	At the time of allotment	20%
3	Within 6 months from the date of allotment	12.5%
4	Within 12 months from the date of allotment	12.5%
5	Within 18 months from the date of allotment	12.5%
6	Within 24 months from the date of allotment	12.5%
7	Within 30 months from the date of allotment	12.5%
8	Within 36 months from the date of allotment	12.5%

10. That the complainant made the initial payment amount of Rs.5,08,578/- by way of cheque and thereafter the complainant failed to make any payment towards instalments due and payable within 6 months and within 12 months from the date of the allotment amounting to Rs.12,37,097/- as on 19.01.2019.



11. That the complainant paid a sum of Rs.2,00,000/-on 20.01.2019 and thereafter no payment was received from the complainant.
12. That the complainant has only paid a sum of Rs.8,21,041/- including GST against the basic sale consideration of the subject unit Rs.22,49,267/- and therefore, the complainant was not interested in honouring the terms of BBA forcing the respondent to cancel the allotment of the aforesaid flat.
13. That the respondent served a reminder notice-1 vide letter dated 24.06.2021 and demanded payment of Rs.20,86,614/- as due and payable towards part payment of the said unit. However, the complainant failed to make payments. The respondent vide letter dated 12.07.2021 once again reminded the complainant for making payment of Rs.20,99,637/- towards part payment of the said unit as due and payable but the complainant once again failed to make the payment.
14. That pursuant to non-payment of the amount due towards the part payment of the said unit, the respondent vide letter dated 22.07.2021 issued pre-cancellation letter demanding payment from the complainant for a sum of Rs.21,07,601/- towards the outstanding dues of the said unit as due and payable within 15 days failing which the respondent would be forced to cancel the allotment but the complainant failed to make the payment.
15. Further, the respondent vide letter dated 05.08.2021 issued cancellation notice demanding payment of Rs.21,17,007/- from the complainant towards the outstanding dues of the said unit as due and payable within 15 days failing which the respondent shall cancel the allotment of the said flat. However, the complainant failed to make the payment.
16. That the complainant failed to pay the outstanding amount despite repeated reminders. So, the respondent cancelled the allotment of the unit in question





vide publication dated 27.08.2021 in the local newspaper "Dainik Bhaskar" in accordance with the clause 4.6 of the BBA.

17. That the respondent is entitled for an amount of Rs.25,000/- + 5% of the total cost of the flat including interest on overdue payment with 18% GST and accordingly after adjustment of the amount balance amount of Rs.3,461/- was refunded to complainant on 04.10.2021 and payment was cleared on 30.12.2021.
18. All other averments made in the complaint were denied in toto.
19. 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.

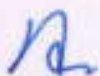
#### **E. Jurisdiction of the authority**

20. 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**

21. 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**



22. 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.*

23. 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 the relief sought by the complainant**

**F.1 Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.**

24. Some of the admitted facts of the case are that vide application dated 14.08.2017, the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. The complainant being successful was allotted unit bearing no. 1204, tower-5, 12<sup>th</sup> floor admeasuring 552.360 sq. ft. and having balcony area of 79.653 sq. ft by the respondent for a consideration of Rs.22,49,267/-. It led to execution of an buyer's agreement dated 19.02.2018 between the parties containing various terms and conditions of allotment including dimensions of the unit,



its price, due date of possession & payment plan etc. The complainant is seeking refund of the amount paid by him i.e. Rs.8,26,541/-. But, as per facts of the complaint he paid an amount of Rs. 1,12,463 vide cheque no. 001204 dated 14.08.2017, Rs.5,08,578/- vide receipt no. MRMI/05905/17-18 dated 17.11.2017 and Rs.2,00,000/- vide cheque no.048176 dated 20.01.2019 (annexure 2 to 5) annexed in the complaint, the amount paid by him comes out to be Rs.8,21,041/-. So, as per the documents on record the amount paid by the complainant is Rs.8,21,041/-.

25. The respondent-builder has sent reminder letters dated 24.06.2021 and 12.07.2021 to the complainant to pay the outstanding dues as per the payment plan. But despite issuance of that reminder letters the complainant failed to make payments leading to issuance of cancellation notice dated 05.08.2021, wherein providing him 15-day's time to make payment failing which the allotted unit shall stand terminated/cancelled without further notice. While the complainant failed to comply with the reminders as well as cancellation notice.
26. Now, the issue arises before the Authority is whether the cancellation of the subject unit was made as per the provisions of the policy of 2013 or not. In the present case the complainant only paid about 36% of the sale consideration but he was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. A public notice dated 21.08.2021 through publication in the daily newspaper of "Danik Jagran" was made by the respondent, when the complainant failed to pay the outstanding dues despite issuance of various reminder. Subsequently, it led to the cancellation of the allotted unit as per the policy of 2013 and buyers' agreement. Clause



5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*" if any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 Days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs. 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*

27. A perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent has sent demand and reminder letters dated 24.06.2021 and 12.07.2021 respectively followed by public notice in the daily newspaper on 21.08.2021. But despite that complainant failed to make payment of the outstanding dues leading to cancellation of the allotment of the said unit. Thus, it shows that the respondent followed the prescribed procedure and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.

As per clause 5(iii)(i) of the affordable housing policy, 2013 in the case of cancellation, the respondent can deduct the amount of Rs.25,000/- only from the amount paid by the complainant and the balance amount shall be refunded back to the complainant. In the present case, the respondent-builder states that it has refunded an amount of Rs.3,461/- to the complainant on 04.10.2021.

28. As per clause 5(iii)(b) of the Policy of 2013, the allottee/applicant is under obligation to deposit the 25% amount of the sale consideration of the unit



till allotment. However, in the present case, the agreement to sell was executed inter-se the parties on 19.02.2018, and the complainant/allottee has paid an amount of Rs.8,21,041/- which constitutes 36% of the sale consideration. Accordingly, the respondent/builder issued reminder letters dated 24.06.2021 and 12.07.2021 to the complainant. Thereafter, the respondent issued pre cancellation notice dated 22.07.2021 followed by cancellation notice dated 05.08.2021. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper "Dainik Jagran". The authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation notice dated 05.08.2021 is held to be valid.

29. Thus, the respondent is directed to deduct only Rs.25,000/- as per clause 5(iii) (i) of the policy of 2013 and shall also adjust the refunded amount paid to the complainant if any and refund the balance amount within a period of 90 days along with interest on the balance amount from the date of cancellation notice i.e. 05.08.2021 till its actual realization.

**G. Directions of the Authority:**

30. Hence, the authority hereby passes this order and issues 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 is directed refund the paid-up amount of Rs. Rs.8,21,041/-(\*Note: inadvertently mentioned Rs.8,26,541/- vide proceedings dated 02.11.2023 and 21.12.2023) after deduction of Rs.25000/- along with the amount already refunded to the

complainant if any, as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation notice i.e. 05.08.2021 till the actual realization of the amount.

ii. The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.

31. The Complaint stands disposed of.

32. File be consigned to registry.

**Dated: 21.12.2023**

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram