

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

**Complaint no.:** 5382 of 2022  
**Order reserved on:** 09.08.2022  
**Order pronounced on:** 28.03.2024

1. Lalit Chopra  
2. Ramesh Kumari  
**Both R/o:** 5566, Jainpuri, Reawri, Haryana.

**Complainants**

**Versus**

M/s Signature Infrabuild Pvt. Ltd.  
**Regd. Office:** Unit No. 1310, 13<sup>th</sup> floor, Dr.  
Gopal Das Bhawan, 28 Barakhamba Road,  
New Delhi-110001

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Sh. Shashi Kant Sharma (Advocate)  
Sh. Neeraj Kumar (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/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 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:

Sr no.	Particulars	Details
1.	Name of the project	Signature Global Aspire, Sector - 95, Gurugram, Haryana.
2.	Nature of project	Affordable Housing
3.	DTCP License No.	73 of 2019 dated 04.07.2019 valid up to 03.07.2024
4.	Rera Registered	69 of 2019 (page 27 of complaint)
5.	Unit no.	E-703 (page no. 27 of complaint)
6.	Unit admeasuring	Carpet Area- 586.57 sq. ft. Balcony area-83.05 sq. ft (page no. 27 of complaint)
7.	Demand cum allotment letter	09.07.2020 (page 14 of reply)
8.	Date of execution of agreement for sale	25.09.2020 (page no. 21 of complaint)
9.	Date of building plan	30.09.2019 (page no. 25 of complaint)
10.	Date of environment clearance	20.12.2019 (confirmed by the respondent during proceedings dated 28.03.2024)
11.	Possession clause	<i>5. Possession 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 Allottee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee(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 instalments as per the Payment Plan, stamp duty and registration charges, <b>the Developer shall</b></i>

		<i>offer possession of the Said Flat to the Allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i>
12.	Due date of delivery of possession	20.06.2024 (calculated from the date of environment clearance including grace period of six months in lieu of Covid-19)
13.	Total sale consideration	Rs.23,87,820/- (page 7 of reply)
14.	Total amount paid by the complainant	Rs.6,02,925/- (admitted by respondent in reply of Order 1 Rule 10 page 1)
15.	Demand letters	09.07.2020, 23.01.2021, 08.02.2021 (page 14-16 of reply)
16.	Pre cancellation letter	23.02.2021 (page 17 of reply)
17.	Cancellation notice/ Notice of termination	10.03.2021 (page 18 of reply)
18.	Newspaper publication	31.03.2021 (page 67 of complaint)
19.	Notice for Unit cancellation through advertisement	01.04.2021 (page 66 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainants have pleaded the following facts:

a. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Signature Global Aspire" Sector 95, Gurugram promising various advantages, like basic amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent the complainant booked a unit in the respondent's project.

b. That the complainants booked a unit no. 703, tower-E admeasuring 669.578 sq. ft. for total sale consideration is Rs.23,87,820/- inclusive of

BSP, two-wheeler parking IFMS, PLC, EDC, IDC etc. in respondent's project. The complainants made payment of Rs.6,02,925/-to the respondent vide different cheques on different dates.

c. Thereafter, a builder buyer's agreement was executed on 25.09.2020 between the parties. As per para no. 5.1 of the builder buyer agreement, the respondent agreed to deliver the possession of the flat within 4 years from the date of approval of building plans.

d. That as per the builder buyer agreement the super area of the unit was 669.578 sq. ft. but with the said agreement, no documents was annexed showing exact dimensions of the unit.

e. That the complainants regularly followed up with the respondent but to no avail. The complainants enquired about status of unit from time to time from the respondent but the respondent gave no satisfactory answer to the complainant.

f. That in the month of July 2021 the complainants visited the corporate office of the respondent and in July 2021 the representative of the respondent has intimated that the unit of complainants has been cancelled on 01.04.2021 through advertisement and the respondent gave a cancellation letter to the complainants.

g. That the representative further assured to complainants if the complainants would make the payment of Rs.4,83,534/- on immediate basis then said unit would be restore in the name of complainants. On this the complainants made a payment of Rs.4,83,534/- on 14.07.2021 vide cheque no. 000759 dated 14.07.2021 and the same was credit into the account of respondent. The representative also said that the unit would be restore within a period of 15-30 days. But till date the respondent has not restored the unit.

- h. That the complainants again asked from the respondent regarding restoration in April 2022, the representatives of respondent told that the unit cannot be restored because the unit has already been cancelled on 01.04.2021. The respondent even after cancelling the subject unit has taken the instalment but they have not restored the unit till date.
- i. That on 02.05.2022, the complainant issued a legal notice to respondent and the same been delivered to respondent on 06.05.2022 but till date neither the respondent send any reply of this notice nor restore the unit.
- j. That the respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. That despite receiving the payment as demands raised by the respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to give satisfactory answers to the complainants as well as "restore the unit" within stipulated period.
- k. Thus, the respondent in the given circumstances, has voluntarily committed breached terms of the builder buyer agreement and have acted arbitrarily for cancelling the unit and forfeiting the amount paid by the complainants for which the respondent should be prosecuted criminally for cheating, fraud and criminal breach of trust.
- l. That due to this omission on the part of the respondent the complainant has been suffering from disruption, mental torture, agony and also continues to incur severe financial losses. The respondent has exploited the complainants, neither sent the reply nor restored the unit. The respondent cannot escape the liability merely by mentioning a clause in the agreement. The respondent has incorporated the clause in one sided buyers' agreement and usurp such a huge amount of the complainant.

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- m. That the respondent in a pre-planned manner defrauded the complainants with their hard-earned money and wrongfully gain himself and caused wrongful loss to the complainants.
- n. That, the complainants requested the respondent many times to set aside the cancellation letter dated 01.04.2021, made and restore the unit booking in the same name but the respondent, with malafide intention had not paid any heed to their request and is not bent upon to alienate the said unit to other third party. The respondent has no right and title to alienate the said unit to any third-party interest as the complainants had never backed out from the terms of the agreement.

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

4. The complainants have sought following relief(s):
- Direct the respondent to handover the possession of the subject unit and set aside the cancellation letter dated 01.04.2021.
  - Direct the respondent to register the conveyance deed
  - Direct the respondent not to charge anything from the complainants which are not part of the buyer agreement.
  - Direct the respondent to waive off all illegal demand raised which is not part of buyer's agreement.

**D. Reply by the respondent**

5. The respondent has contested the complaint on the following grounds:
- That the complainants applied to the respondent for allotment of a flat in the project named "Signature Global Aspire" and submitted two cheques on 28.12.2019 for Rs.1,19,391/- dated 28.12.2019 towards the booking amount. However, when these cheques were presented, one cheque bearing no.000729 had returned unpaid on account of insufficient funds.
  - Subsequently, through a draw of lots held in terms of applicable law, the complainants were allotted a flat bearing no.E-703 admeasuring carpet area of 586.573 sq. ft. balcony area 80.055 sq. ft. inclusive of the two wheeler open parking site and pro rata share in the common area.

- c. Thereafter, the respondent vide allotment letter cum demand letter dated 09.07.2020, informed the complainants about the allotment of the subject unit and demanded payment of Rs.4,83,534/- payable on allotment. However, the complainants failed to make the payment.
- d. Subsequently to the allotment of the subject unit, the complainants executed a builder buyer agreement dated 25.09.2020 wherein the complainants agreed to make payment as per the terms of the BBA and the respondent agreed to handover the possession of the unit as per the terms and conditions as contained therein.
- e. That the complainants paid a sum of Rs.1,19,391/- at the time of booking of the flat and the balance payment was to be made in terms of the buyer's agreement.
- f. That the complainants defaulted in making payment of the instalment which became due and payable on allotment of the subject unit amounting to Rs.4,83,534/- despite the service of demanded notice dated 09.07.2020.
- g. That in January 2021, another sum of Rs.3,01,462/- became due being payable by the complainants within 6 months of allotment of the subject unit. However, the payment of the instalment of January 2021 remained unpaid.
- h. That a reminder notice letter dated 23.01.2021, was issued by the respondent with demand of payment of Rs.8,24,103/- due and payable towards part payment of the subject unit. However, the complainants failed to make the payment.
- i. That the respondent vide letter dated 08.02.2021 again reminded the complainants for making payment of Rs.8,29,314/- towards part payment as due and payable, but the complainants again failed to make the payment. Pursuant to non-payment of the amount due towards the part payment, the respondent vide letter dated 23.02.2021 issued pre-

cancellation letter demanding payment from the complainants for a sum of Rs.8,34,202/- towards the part payment due and payable within 15 days, failing which the respondent would be forced to cancel the allotment. However, the complainant failed to make the payment.

- j. Further, the respondent vide letter dated 10.03.2021 issued cancellation letter demanding payment of Rs.8,39,740/- from the complainants towards the part payment payable within 15 days, failing which the respondent shall cancel the allotment of the subject unit. However, the complainants failed to make the payment.
- k. That the complainants failing to pay the outstanding amount despite repeated reminders, the respondent, proceeded to cancel the allotment vide cancellation letter dated 01.04.2021, after due publication in the local newspaper in accordance with the clause 4.6 of the dated 25.09.2020. Pursuant to the cancellation of the allotment of the subject unit, the respondent was entitled to deduct the amount from the payment received from the complainants, in accordance with clause 4.5 of the buyer's agreement.
- l. As per the clause 4.5 of the buyer's agreement the respondent was entitled for an amount of Rs.25,000/- + 3% of the total cost of the unit i.e. Rs.23,87,820/- + interest on overdue payment + 18% of the GST. In total, a sum of Rs.2,39,306/- along with GST had been deducted towards the charges for the cancellation of the unit and after deduction of the aforesaid amount, a sum of Rs.3,63,619/- was refunded to the complainants vide cheque no.715640 dated 14.09.2022 drawn on IndusInd Bank.

6. All other averments made in the complaint were denied in toto.

7. 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**

8. 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**

9. 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**

10. 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.*

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

**F.I Direct the respondent to handover the possession of the subject unit and set aside the cancellation letter dated 01.04.2021.**

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**F.II Direct the respondent to register the conveyance deed.**

**F.III Direct the respondent not to charge anything from the complainants which are not part of the buyer agreement.**

**F.IV Direct the respondent to waive off all illegal demand raised which is not part of BBA.**

12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. Some of the admitted facts of the case are that vide allotment letter dated 09.07.2020, the complainants were allotted a unit bearing no. E-703 admeasuring 586.57 sq. ft. carpet area and having balcony area of 83.05 sq. ft. by the respondent for a consideration of Rs.23,87,820/- in the project of the respondent detailed above. It led to execution of buyer's agreement dated 25.09.2020 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 complainants herein are seeking possession of the subject unit and to set aside cancellation letter dated 01.04.2021.
14. The respondent-builder has sent demand letters dated 09.07.2020, 23.01.2021 and 08.02.2021 to the complainants to pay the outstanding dues as per the payment plan. But despite issuance of that reminder letters the complainants failed to make payments leading to issuance of cancellation notice dated 01.04.2021, wherein providing complainants 15-days' 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.
15. 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 complainants only paid about 25% of the sale consideration but they were 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 31.03.2021 through publication in the daily newspaper of "Danik Jagran" was made by the respondent, when the complainants failed to pay the outstanding dues despite issuance of various reminder.

16. 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".*

17. A perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent has sent demand and reminder letters dated 09.07.2020, 23.01.2021 and 08.02.2021 respectively followed by public notice in the daily newspaper on 31.03.2021. But despite that complainants 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 complainants with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.
18. 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 complainants and the balance amount shall be refunded back to the complainants. In the present case, the respondent-

builder states that it has refunded an amount of Rs.3,63,619/- to the complainants vide cheque no. 715640 dated 14.09.2022. Nonetheless, the complainants filed an application dated 17.07.2023 placing original demand draft no.500646 dated 14.07.2023 of Rs.3,63,619/- on record. However, the same demand draft was returned to the counsel for complainants during hearing dated 28.03.2024.

19. 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 25.09.2020 after allotment of unit on 09.07.2020, and the complainants paid an amount of Rs.6,02,925/- which constitutes only 25% of the sale consideration. Accordingly, the respondent/builder issued demand and reminder letters dated 09.07.2020, 23.01.2021 and 08.02.2021 to the complainants. Thereafter, the respondent issued pre cancellation notice dated 23.02.2021 followed by cancellation notice dated 10.03.2021. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper "Dainik Jagran" on 31.03.2021 and issued a cancellation letter dated 01.04.2021. 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 letter dated 01.04.2021 is held to be valid.
20. 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 complainants and refund the balance amount within a period of 90 days along with interest from the date of cancellation notice i.e. 01.04.2021 till its actual realization.

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**G. Directions of the Authority:**

21. 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.6,02,925/- after deduction of Rs.25000/- along with the amount already refunded to the complainant i.e. Rs.3,63,619/-, 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. 01.04.2021 till the actual realization of the amount.
- ii. The above-mentioned amount be refunded to the complainants within a period of 90 days and failing which legal consequence would follow.

22. The Complaint stands disposed of.

23. File be consigned to registry.

**Dated: 28.03.2024**

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory  
Authority, Gurugram