

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

Complaint no. : 1447 of 2023  
Date of first hearing: 05.09.2023  
Order Reserve On : 15.03.2024  
Order Pronounced On: 03.05.2024

Rahul Khetan R/o: Gulam Ali Pura, Behraich- UP-271801	<b>Complainant</b>
Versus	
M/S Signature Global Homes Pvt. Ltd. Regd. Office: - Ground Floor, Tower A, Signature Towers, South City-I, Gurugram, Haryana	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Pankaj Kumar Yadav	Complainant
Shri Neeraj Kumar	Respondent

**ORDER**

1. The present complaint dated 07.04.2023 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:

S. N.	Particulars	Details
1.	Name of the project	Signature Global Park V, Sector-36, Sohna, Distt, Gurgaon
2.	Nature of Project	Affordable Plotted Housing Colony (Deen Dayal Jan Awas Yojna)
3.	Project area	10.53125 acres
4.	DTCP license	118 of 2019 dated 12.09.2019 valid upto 11.09.2024
5.	HARERA registration	30 of 2020 dated 08.10.2020 upto 30.07.2022 Extension upto 29.07.2023
6.	Unit no.	A45C, 1 <sup>st</sup> Floor, Block A (page no. 49 of complaint)
7.	Unit area admeasuring	1081.67 sq. ft. (page no. 49 of complaint)
8.	Application form	01.02.2021 (page no. 49 of complaint)
9.	Agreement to sell	05.03.2021 (page no. 40 of complaint)
10.	Possession clause	<b>Clause 7: Possession of the Residential Independent Floor</b>

		The Promoter assures to handover possession of the Residential Independent Floor along with parking (applicable only if parking fee/charge has been paid) as per agreed terms and conditions <b>by 30 July, 2022</b> unless there is delay due to force majeure, Court orders, Government policy/guidelines, decisions etc affecting the regular development of the real estate project.
11.	Due date of possession	<b>30.07.2022</b>
12.	Total sale consideration	Rs. 59,68,869/- (As per customer ledger on page 75 of complaint)
13.	Amount paid by the complainant	Rs. 15,67,110/- (As per customer ledger on page 75 of complaint)
14.	Notices sent by respondent for payment	26.03.2021, 07.05.2021 (Pre intimation), 26.12.2022, 17.01.2023 (pre cancellation letter)
15.	Cancellation notice	07.02.2023 (page no 79 of complaint)
16.	Final settlement letter regarding amount refundable	06.03.2023 (Page no. 73 of complaint)
17.	Occupation certificate	06.05.2022 (as per website of TCP)
18.	Offer of possession	Not offered

**B. Facts of the complaint**

3. That on 01.02.2021, the complainant booked a unit in the said project and at the time of booking /registration, the complainant have paid booking amount. Total amount of Rs. 15,67,110/- has been paid by the complainant to the respondent in respect of the above said floor.
4. That the agreement to sell was executed on 05.03.2021. As per clause no. 7.1 of the agreement to sale, the possession of the unit will be handed over to the complainant till July, 2022.
5. That 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 apartment till July 2022 but till today no possession has been offered by the respondent.
6. That 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.
7. That the respondent had terminated the booking of the complainant without any rhyme and reasons and without giving any satisfactory reply for the same.
8. That, thereafter, the complainant repeatedly followed up with the officials of the respondent to restore the booking of the complainant and allow him to pay the balance amount but the respondents avoided the matter on one pretext or the other.
9. That 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 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 complainant into making payments even if the same was not due depending on the stage of construction of the project.

10. That the complainant have paid more than 35% of the total amount towards the consideration of the unit which includes the amounts of the entire due installments, 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.
11. That 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.

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

12. The complainant has sought following relief(s):
  - I. Direct the respondent to handover the actual physical possession of the independent residential floor.
  - II. Direct the respondent to pay delayed interest from the date of agreement to till the date of realization.

**D. Reply by the respondent**

13. That admittedly complainant applied to the respondent for allotment of flat in the project named "Signature Global Park V" on 01.02.2021 and subsequently he was allotted a flat bearing no. 5-A45C-1F and BBA was executed on 05.03.2021 in this respect.

14. That in terms of clause 1.2 of the BBA dated 05.03.2021 the total consideration of the said flat was Rs.55,92,634/- excluding taxes and other charges etc and the complainant was liable to make payment towards the cost of the said flat in terms of clause 1.4 as per the schedule C (Payment Plan).
15. That the respondent vide email dated 26.03.2021 informed the complainant about the outstanding payment of Rs.8,66,391/- and demanded the payment for the aforesaid amount on or before 10.04.2021.
16. That the respondent then issued pre-intimation letter dated 07.05.2021 thereby informing the complainant for making arrangement for making payment of Rs.12,15,302/-, the amount becoming due within 6 months of allotment.
17. That the complainant since then defaulted in making payment towards the cost of the said flat and as such another demand notice was sent vide demand notice dated 26.12.2022 demanding payment of Rs.39,42,700/-.
18. That pursuant to non-payment of the amount due towards the part payment of the said flat, the respondent vide letter dated 17.01.2023 issued pre-cancellation letter demanding payment from the complainant for a sum of Rs. 23,47,412/- towards the part payment of the said flat as due and payable within 15 days failing which the respondent would be forced to cancel the allotment but the complainant once again failed to make the payment.
19. That the complainant continued the default in making payment when the respondent was constrained to serve cancellation notice on the complainant vide cancellation notice dated 07.02.2023.
20. That the complainant failing to pay the outstanding amount despite repeated reminders, the respondent, admittedly, proceeded to cancel the allotment vide email dated 06.03.2023 and also provided settlement



amount refundable to the complainant after forfeiture in accordance with the clause 9.3(ii).

21. That pursuant to the cancellation of the allotment of the said flat the respondent is entitled to deduct the amount from the payment received from the complainant, in accordance with clause 9.3(II) of the BBA and the calculation provided in the tabulated form as under:

S.No.	Particular	Amount to be forfeited
1	Total Received amount	Rs. 15,67,110/-
2	10% of the Unit Cost + 18% GST	Rs. 6,59,930/-
3	Less GST	Rs. 1,84,674/-
4	Accrued Interest	Rs. 5,67,030/-
5	Refundable amount [1-(2+3+4)]	Rs. 1,55,476/-

22. The respondent has refunded the aforesaid amount to the complainant and hence the complaint is misconceived and deserves to be dismissed.
23. 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**

24. 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**

25. 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**

26. 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.*

27. 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. I** Direct the respondent to handover the actual physical possession of the independent residential floor.



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

28. All the above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. As the complainant has sought delay possession charges along with possession of the unit.
29. The complainant booked a unit bearing no. A45C, on 1<sup>st</sup> Floor, in Block A in the project of the respondent company namely "Signature Global Park V" at Sector-36 Gurugram vide application form dated 01.02.2021. Thereafter, a buyer's agreement dated 05.03.2021 was executed between the parties regarding the said unit for a total sale consideration of Rs.59,68,869/- and the complainant has paid a sum of Rs.15,67,110/- against the same in all. The respondent company completed the construction and development of the project and got the OC on 06.05.2022. The plea of the complainant-allottee is that as per clause 7 the possession of the unit was to be handed over by July 2022. So, as per the said clause the respondent delayed the project and liable to pay interest for such delay.
30. The plea of the respondent-builder is otherwise and submitted that the complainant is a defaulter and has failed to make payment as per the agreed payment plan. Various reminders and final opportunities were given to the complainant and thereafter the unit was cancelled vide letter dated 07.02.2023. Accordingly, the complainant failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the authority is whether this cancellation is valid or not?

31. The authority has gone through the payment plan, which was annexed with application form and duly signed by the complainant, which is reproduced for ready reference: -

S. no.	Particulars	(%)
1	At the time of submission of application form or clearance of cheque (whichever is earlier)	10% of the total price
2	On allotment or 30 days from the submission of the application form (whoever is earlier)	15% of the total price simultaneously BBA has to be executed
3	Within 6 months from the date booking or Clearance of Cheque (whichever is earlier)	20% of total price
4	Within 10 months from the Date of Booking or Clearance of cheque (whichever is earlier)	20% of total price
5	Within 16 months from the Date of Booking or Clearance of cheque (whichever is earlier)	20% of total price
6	Within 22 months from the Date of Booking or Clearance of cheque (whichever is earlier)	10% of total price
7	On Offer of Possession	5% of total price Possession Charges/Other Charges (if any) as applicable

32. It is matter of record that the complainant booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs. 59,68,869/-

towards total consideration of Rs.15,67,110/- which constitutes 26.25% of the total sale consideration and he has paid the last payment only on 01.02.2022. As per the payment plan the allottee had made two instalments. The third instalment was to be paid within 6 months from the date of booking which is 20% of the total price of the unit. The said time period is due on 01.08.2021.

33. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 05.03.2021. The respondent after giving reminders and pre cancellation letter dated 17.01.2023 has cancelled the subject unit on 07.02.2023. Despite issuance of reminders, the complainant has failed to take possession and clearing the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit.
34. As per clause 9.3 of the agreement to sell, the respondent/promoter has a right to cancel the unit in case the allottee has breached the agreement to sell executed between both the parties. Clause 9.3 of the agreement to sell is reproduced as under for a ready reference:
- 9.3 i. In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;*
- ii. In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Independent Floor for Residential Independent Floor along with parking (applicable only if parking fee/charge has been paid) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment."*
35. That the above mentioned clause provides that the promoter has right to terminate the allotment in respect of the unit upon default under the said

- agreement. Further, the respondent company has already obtained the occupation certificate for the project of the allotted unit on 06.05.2022.
36. Thereafter, the respondent/promoter issued demand letter 26.12.2022 and pre cancellation letter on 17.01.2023 further, cancellation letter on 07.02.2023. The respondent cancelled the unit of the complainant after giving adequate demand notices. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.
37. 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 complainant has not sought the relief of the refund of the entire paid up amount while filing of the instant complaint or during proceeding. It is pertinent to mention that respondent in its written submission has submitted that they has refunded an amount of Rs. 1,55,476/- after deduction but no document is held on record with regard to such. 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."*

38. From the above, the intention of the legislature is quite clear that the Act of 2016 has been enacted to protect the interests of the consumer in real estate sector and to provide a mechanism for a speedy dispute redressal system. It is also pertinent to note that the present Act is in addition to another law in force and not in derogation. In view of the same, the authority has power to issue direction as per documents and submissions made by both the parties.
39. 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 Ors. 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 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 Limited** decided on 26.07.2022, held that 10% of basic sale price is 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."*


40. 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, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 07.02.2023 till the actual date of refund of the



amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**H. Directions of the authority**

41. 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 to refund the paid-up amount of Rs. 15,67,110/- after deducting 10% of the sale consideration of Rs. 59,68,869/- being earnest money along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation 07.02.2023 till its realization.
  - 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.
42. Complaint stands disposed of.
43. File be consigned to registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 03.05.2024**