

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

Complaint no. :	916 of 2023
Date of filing complaint:	09.03.2023
Date of order	14.05.2024

Bhoop Singh (Deceased) through its legal heirs Banti
R/O: Kadarapur(84), Badshapur, Haryana - 121001

Complainant

Versus

M/s Signature Global (India) Private Limited
Regd. Office: 1304, 13th Floor, DR. Gopal Das Bhawan, 28
Barakhamba Raod, Connaught Place, New Delhi- 110001
Also at: - Ground Floor, Tower-A, Signature Tower, South
City- 1, Gurugram Haryana - 122001

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Chairman
Member
Member

APPEARANCE:

Sh. Rajan Kumar Hans (Advocate)
Sh. Mintu (AR of the company)

Complainants
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.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Signature Global Prime, Sector 63A, Gurugram, Haryana.
2.	Nature of the project	Affordable housing policy
3.	RERA registered/not registered	Registered vide no. 68 of 2019 dated 14.11.2019 Valid w.e.f. 14.11.2019 till 30.10.2023
4.	DTCP license no.	i. 69 of 2019 dated 01.03.2019 Valid up to 25.06.2024 ii. 40 of 2020 dated 11.12.2020 Valid up to 10.12.2025
5.	Building plan dated	11.10.2019 [As per information available with planning branch of the authority]
6.	Revised building plan dated	27.09.2021 [As per information available with planning branch of the authority]
7.	Environmental clearance dated	24.12.2019 [As per information available with planning branch of the authority]
8.	Revised environmental clearance	13.07.2021 [As per information available with planning branch of the authority]
9.	Allotment letter	07.07.2020 (As per page no. 21 of complaint)
10.	Unit no.	D-405, 4 th floor, tower D (Page no. 21 of complaint)
11.	Unit admeasuring	Carpet area- 573.538 sq. ft. along with balcony area of 90.590 sq. ft. (Page no. 21 of complaint)
12.	Date of execution of	Not executed

	agreement for sale	
13.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance , whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy
14.	Due date of possession	24.06.2024 [Note: - Calculated from date of approval of environment clearance being later i.e., 24.12.2019 as per policy, of 2013, which comes out to be 24.12.2023 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
15.	Total sale consideration as per customer ledger dated 26.07.2021 at page 31 of complaint	Rs.25,03,989/-
16.	Total amount paid by the complainant	Rs.8,86,064/- (As alleged by the complainant on page 13 of complaint) As per reply on page 2, Rs.4,49,559/- has been returned to the complainant and Rs.1,41,150/- has been forfeited by the respondent.
17.	Notice of termination and cancellation of unit	09.03.2021 (Page no. 26 of complaint)
18.	Date of publication notice for payment of	31.03.2021 (Page 18 of reply)

	outstanding dues and cancellation of allotment		
19.	Letter by the respondent intimating unit cancellation through advertisement in newspaper	01.04.2021 (Page 19 of reply)	
20.	Death certificate of the complainant dated	12.08.2021 (Page no. 15 of complaint)	
21.	Occupation certificate	Not obtained	
22.	Offer of possession	Not offered	

B. Facts of the complaint:

3. The complainant has made following submissions in the complaint:

- i. That the project in question is known as "**PRIME**" situated at Sector 63A, Gurugram, and Haryana which is a project under Affordable Housing Policy 2013, issued by the Government of Haryana.
- ii. That in the year 2019, Mr. Bhoop Singh (Now Deceased) and his children got information about an advertisement in a local newspaper about the affordable housing project "Prime" at Sector 63A, Gurugram, and Haryana. When he called on the phone number provided in the newspaper, the marketing staff of the respondent showed a rosy picture of the project and allure with proposed specifications and invited for the site visit.
- iii. That the complainant (now deceased) applied for a 2 BHK residential unit through draw in an upcoming project of respondent. On 19.11.2019 the complainant had remitted Rs.1,16,972,-/ towards booking the unit.

- iv. That on the date 18.02.2020, the complainant Bhoop Singh died due to old age complications. Due to the pandemic of corona, the death certificate could only be obtained in the month of August 2020.
- v. That on 04.07.2020 the Draw of the project was held and the unit number D-405,4th floor having a super built-up area of 573.53 sq. feet was allotted to the complainant (now deceased) for the total cost of the unit arrived at Rs.23,13,318/-.
- vi. That after the death of Bhoop Singh, his son Banti is the next legal heir for the said unit, and he has preferred the complaint on his name as the legal heir of the deceased. On 07.07.2020, the respondent issued a demand cum allotment letter, demanding a sum of Rs.4,73,737/- towards the said unit.
- vii. That the complainant i.e., Banti (legal heir of the deceased) informed the news of the death of his father to the respondent and under their instruction on 02.11.2020, deposited the amount of Rs.4,73,737/- to the respondent, which was duly accepted by the respondent. The respondent even took the third party declaration form from the complainants and was fully aware of the death of the original allottee Mr. Bhoop Singh.
- viii. That the builder buyer agreement of the unit was not initiated by the respondent as it knew the information of the death of the original allottee Bhoop Singh but had a malafide intention of coning the complainant and to deprive him of his legal rights on the unit.
- ix. That on 30.11.2020, the respondent issued a demand of Rs.2,95,355/- which became due as to be taken at the *milestone of within 6 months* from the date of allotment of the said unit.
- x. That the complainant is not that educated and belongs to a rural background, he many times visited the office of the respondents to do

the necessary action regarding the death of his father but no action was taken by the respondents even after his repeat visits to the respondent office. In the meantime, the respondent continues to send the reminder of the payment to the complainant. On 09.03.2021 the respondent issued a cancellation notice for the said unit.

- xi. That the complainant again visited the office of the respondent and talked to many persons regarding his request to transfer the unit on his name so that he can make the payment of the unit as the respondent refused to take the 3rd party cheques, offered by him many times. At the end on 12.05.2021, the respondent accepted the cheque of Rs.3,00,000/- from the complainant and got it passed on 14.05.2021.
- xii. That the respondent has cancelled the said unit and also forfeited the amount of Rs.1,41,150/- which was paid to them. That the complainant requested again many times to the respondent to provide him the information about the transfer of the unit from the name of Bhoop Singh deceased to his name but the respondent had malafide intentions of not doing this and thereby on 13.07.2021 the respondent returned the amount of Rs.4,49,559/- back to the bank account of deceased Bhoop Singh and Rs.3,00,000/- back to the bank account of complainant and forfeited the remaining amount of Rs.1,41,150/-, thus finally cancelled the booking for no reason.
- xiii. That the present complainant (legal heir of deceased Bhoop Singh) has done many verbal communication to respondent, regarding the procedure of changing the ownership of the unit to his name but the respondent had malafide intentions of not doing the same and to earn more money it has cancelled the unit and due to which the complainant has suffered the financial and mental consequences.

- xiv. That the main grievance of the complainant in the present complaint is that in spite of the complainant having paid all instalments amounts of flat, and wanted to legally transfer the unit into his name but the respondent cancelled the unit and forfeited a part of money, therefore did not allow the transfer of the unit to its legal heirs.
- xv. That for the first time cause of action for the present complaint arose on 19.11.2019, when the booking amount was given to respondent for the said unit. Further the cause of action arises when respondent issued cancellation letter and cancelled the said unit. Further the cause of action again arose when the respondent had forfeited the money amounting to Rs.1,41,150/-. The cause of action is alive and continuing and will continue to subsist till such time as this Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to restoration of the allotted unit in the project in the name of Banti who is the legal heir of the Bhoop Singh (deceased).
 - ii. Direct the respondent to adjustment of the money of Rs.1,41,150/- which is already forfeited by the respondent in the restored unit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent by way of written reply made following submissions: -

- i. That the complainant vide application no. 54105 had applied to the respondent for allotment of flat in the project namely "Prime", under the Affordable Group Housing Policy, 2013.
- ii. That in terms of the AGHP the draw of lots was held on 04.07.2020 in presence of the officials of the Directorate of Town & Country Planning and the complainant was successful in the said draw and accordingly the respondent issued the allotment of the flat being flat no. D-405 in Tower No.-D, having carpet area 573.538 sq. ft. on ground floor with balcony area of 90.590 sq. ft. vide allotment letter dated 07.07.2020.
- iii. That the respondent vide allotment cum demand letter dated 07.07.2020 made demand from the allottee for payment of Rs.4,73,737/-. However, the amount remained unpaid for long time and was finally paid on 02.11.2020.
- iv. That the respondent vide letter dated 30.11.2020 informed the allottee for payment due of Rs.2,93,355/- payable within 6 months from the date of allotment. The allottee failed to make payment of the amount due and also failed to execute necessary documents viz, BBA, the respondent vide letter dated 09.03.2021 issued notice for termination/cancellation of Unit which was subsequently cancelled vide newspaper publication on 15.03.2021.
- v. That after the allotment was cancelled, the respondent had refunded the amount of Rs.4,49,559/- to the Allottee after deduction of Rs.1,41,150/- towards cancellation charges.
- vi. That during these period no one including the complainant did not inform to the respondent about the demise of the allottee and hence the respondent being unaware of the factum of death of the allottee conducted itself in the manner as if the allottee had been alive. However, this does not confer any legal rights to the legal heirs of the allottee on the allotted flat. In view of the above, the complaint deserves to be dismissed.

7. Copies of all the relevant documents have been filed and placed on 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

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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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 complainants:

- F.I Direct the respondent to restoration of the allotted unit in the project in the name of Banti who is the legal heir of the Bhoop Singh (Deceased).**
- F.II Direct the respondent to adjustment of the money of Rs.1,41,150/- which is already forfeited by the respondent in the restored unit.**
10. The complainant was allotted unit no. D-405, on 4th floor, in tower – D, in the project Signature Global Prime, Sector- 63A, Gurugram, Haryana by the respondent/builder for a total consideration of Rs.25,03,989/- under the Affordable Housing Policy, 2013 vide allotment letter dated 07.07.2020. However, the buyer's agreement was not executed inter se parties. As per clause 1(iv) Affordable Housing Policy, 2013, it is stated that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."* The respondent has obtained environment clearance and building plan approval in respect of the said project on 24.12.2019 and 11.10.2019 respectively. The due date of possession is being calculate from the date of environmental clearance being later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 24.12.2019 which comes out to be 24.12.2023. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. Therefore, the due date of possession comes out to be 24.06.2024. The complainant paid a sum of

Rs.8,86,064/- and is always ready and willing to retain the allotted unit in question.

11. During proceeding dated 14.05.2024, the respondent stated that the Sh. Bhoop Singh died on 18.02.2020 (death certificate at page 15 of complaint) and the said unit was allotted to Sh. Bhoop Singh vide letter dated 04.07.2020. The respondent further submitted that property cannot be allotted in the name of a dead person and death was not brought to the knowledge of the respondent by any of the LR's of Sh. Bhoop Singh. On previous date of hearing i.e., 14.11.2023, the counsel for the respondent stated that the unit was cancelled on account of non-payment of the dues even by the legal heirs and refund of the amount of Rs.4,49,599/- has been made to the complainant allottee and before cancellation due public notice was also made on 31.03.2021.
12. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 09.03.2021. In line with the aforesaid facts, filed by the parties and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
13. In the present complaint, the respondent has failed to make refund of the balance amount after making deductions as per the Affordable Housing Policy, 2013. 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 newspaper 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".

14. The Authority observed that the respondent/builder issued demand cum reminder letters dated 26.07.2020, 10.08.2020, 22.02.2021. Thereafter, the respondent issued notice of termination and cancellation of unit notice on 09.03.2021, which led to issuance of notice for cancellation by the respondent/builder dated 01.04.2021. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper "Dainik Jagran" New Delhi. 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.
15. As per cancellation clause of the Affordable Group Housing Policy, 2013, the respondent can deduct an amount of Rs.25000/- only and the balance amount shall be refunded back to the complainant. The complainant has made payment of Rs.8,86,064/- and after cancellation, the respondent has refunded Rs.4,49,559/- on 13.07.2021. The respondent company has not returned the balance amount to the complainant in terms with the Affordable Group Housing Policy, 2013 as the respondent has deducted Rs.1,41,150/- instead of Rs.25,000/-. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy, 2013 along with interest from date of cancellation of allotment i.e., 01.04.2021, till the actual realization of the amount.

H. Directions of the Authority:


16. 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 functions entrusted to the Authority under section 34(f) of the Act of 2016:

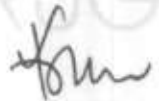
- a) The respondent is directed refund the balance amount of Rs.1,41,150/- after deduction of Rs.25000/- as per clause 5(iii)(i) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment till the actual realization of the amount.
- b) 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.

17. Complaint stands disposed of.

18. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.05.2024