

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

**Complaint no.:** 752 of 2024  
**Date of decision:** 16.10.2024

Mr. Kamal Bhatia  
**R/o:-** C -11, Z -1, Block-C,  
Dilshad Garden, East Delhi.

**Complainants**

Versus

M/s Forever Buildtech Pvt. Ltd.  
**Registered Office at:** - Floor-12<sup>th</sup>, Dr. Gopal das  
Bhawan, 28 Barakhamba Road, Nw Delhi.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Nisha Gaur (Advocate)

Complainant

Minto Kumar (AR of respondent)

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 29 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 allottees 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Signum 95-A", Sector-95A, Gurugram, Haryana.
2.	Nature of the project	Commercial
3.	RERA Registered	Not Registered
4.	Allotment letter	24.10.2019 (As on page no. 14 of complaint)
5.	Unit no.	FF-34 (As on page no. 14 of complaint)
6.	Unit area	213.84 sq.ft. [Super-Area] (As on page no. 14 of complaint)
7.	Date of execution of plot buyer's agreement	Not available
8.	Possession clause	<i>Not available</i>
9.	Due date of possession	24.10.2022 [Calculated 36 months from date of allotment]
10.	Basic sales consideration	Rs.21,27,708/-
11.	Total amount paid by the complainant	Rs.2,53,618/-
12.	Occupation certificate	Not on record
13.	Offer of possession	Not offered
14.	Cancellation letter	31.07.2022 [Note: The complainant forfeited the entire amount and sent a refund cheque of Rs.3,250/- on 28.09.2021]

**B. Facts of the complaint:**

3. The complainant made the following submissions in the complaint.
- I. That the complainant booked a shop vide booking receipt no. B595/00/76/19-20 (213.84 sq.ft) in Signature Global "SIGNUM 95A" against the booking amount of Rs.2,53,618/- and the same amount was credited in the respondent's account .
  - II. That the complainant further received a Provisional Allotment Letter of Shop no.-FF-34, admeasuring super area 213.84sq.ft. @Rs.9950/- per s.ft. in the project.
  - III. That the complainant received a demand Pre-Intimation Letter dated 06.03.2021 for making the payment amounting to Rs.15,30,127/- .
  - IV. That the complainant requested via mail to the respondent through Mr. Rajbir Singh/99acres ( a channel partner) for transferring the same shop in the name of his younger real brother i.e., Mr. Deepak Bhatia. On the request of the complainant, the respondent asked for the relevant documents and accordingly the sane were sent by the complainant on 01.02.2022.
  - V. Thereafter, the respondent never issued a re-allotment letter in the complainant's brother's name and never executed Builder Buyer's Agreement.
  - VI. That the respondent cancelled the unit on 31.07.2022 without providing any refund and forfeited the entire amount and sent a cheque of Rs.3,250/- only.

VII. That from the past two years, the complainant is trying to contact the respondent through telephone and personal visits to its office for redressal of his grievances, but no suitable response has ever been given by the respondent. Hence, the present complaint.

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

4. The complainant has filed the present complaint for seeking following reliefs:
  - i. Direct the respondent to refund the entire deposited amount along with interest.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention 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 has contested the present complaint on the following grounds:
  - i. That the events stated in the complaint need no response and the respondent admits the allotment of the shop to the complainant.
  - ii. It is denied that the complainant sent any or all the relevant documents which were required as alleged by the complainant. Further, the respondent is liable to perform its duty as per terms agreed in the application form/BBA only.
  - iii. Since the complainant failed to come forward to discharge its liability hence the cancellation happened under compulsion.
  - iv. It is denied that the complainant approached the respondent with any demands of transferring the unit in favor of the complainant's

- brother. No such request was made by the complainant to the respondent.
- v. The present complaint must be dismissed as it is nothing but a gross misuse of process of law.
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 allottees 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;*

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.
10. 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."*

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases 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**
  - F.I Direct the respondent to refund the entire amount paid by the complainant along with interest.**
  12. In the present case, the complainant approached the respondent and applied for allotment of a shop in the project namely " Signum-95A" of the respondent, situated in the revenue state of Village-Wazirpur, Sector-95-A, Gurugram, Haryana. The complainant in lieu of the said booking paid an amount of Rs.2,53,168/- being the booking amount vide cheque dated 30.09.2019 drawn on S.B.I bank. The complainant made the booking in respect to shop bearing no. 34 on first floor admeasuring 213.84 sq.ft. of super area in the project "Signum-95-A".
  13. The complainant was provisionally allotted unit bearing no. FF 34 admeasuring super area of 213.84sq.ft in the project of the respondent. Thereafter, the complainant received a demand pre-intimation letter dated 06.03.2021 whereby the respondent demanded a payment amounting to Rs.15,30,127/- .
  14. The complainant contended that he requested the respondent via a channel partner/middle man namely, Mr. Rajbir Singh on 99 acres to transfer the shop allotted to him in favour of his brother Mr. Deepak Bhatia and have annexed the said conversation at Annexure-4 of the complaint. The Authority is of the view that as per annexure 4 no such conversation regarding the request for transfer of the unit in the name of the complainant's brother is there. The e-mail is as follows:



*" Juhaid as per our telephonic discussion today it was told by that i will get the desired docs and details todays evening at mail positively. But still i have not received the same.*

*Pls provide the same at earliest so that i could discuss the matter further. I have already mailed to u people on 25.4.23"*

15. Also the complainant has placed on record another e-mail dated 28.04.2023, no such conversation is there as contended by the complainant. The e-mail is produced below:

*" Mr. Juhaid as pee our telephonic discussion todays pls provide the following by today via mail positively.*

*I m unable to understand why u people are delaying in providing me the detailed calculations as to how u have arrived to my refund amount of Rs.3250/- despite my repeated requests to your tem.*

*Pls provide he copy and detailed explanantion of the following ODN No. (As per ledger provided to me upto the date 2.8.22)*

16. Mreover, as per Clause 8 of the booking form , undated but signed by the complainant, talks about cancellation by allottee. The relevant part of the clause is reproduced as under: -

*8. The earnest money shall mean 15% of the Basic Sale Price of the shop sold. In case the Allottee, at any time opts for cancellation of the Booking/allotment, the Company would cancel such an apartment after forfeiting 15% of the Basic Sale price, constituting the Earnest money, wih interest accrued and thereafter the balance if any would be refunded. The Allottee hereby accepts and authorizes the Compnay to forfeit out of the amounts paid/payable by him/it, the earnest money as aforementioned together with the processing fee, any interest due or payable , any other amount of a non-refundable nature in the event of the failure of the Allottee to perform his/it obligations or fulfil all the terms and conditions mentioned in the booking form, Developer Buyer Agreement and the Maintenance Servi es Agreement and such other documents as may be required b the Company to be executed by the Allottee or in the event of failure of the Allottee to sign and return the Developer Buyer Agreement in its original form to the Company within Fifteen days from the date of its dispatch by the Developer.*

17. The Authority is of the view that the drafting of the aforesaid clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee. As per the aforesaid clause the builder is entitled to forfeit 15% of the basic sale price of the shop.



18. However, in 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 Urs. 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."*

19. 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 but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the basic sale consideration and return the remaining amount along with interest at the rate of 11.10% (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 i.e., 31.07.2022 till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

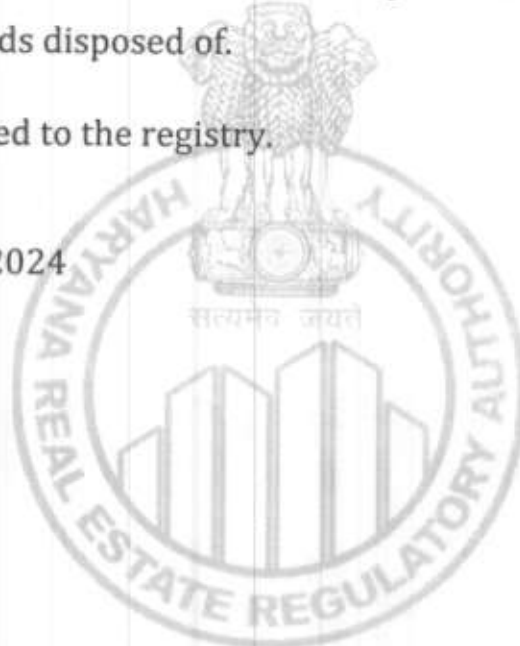
**G. Directions of the Authority:**

20. 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) of the Act.

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.2,53,618/-, after deducting 10% of the sale consideration of Rs.21,27,708/- being earnest money along with interest on such balance amount at the rate of 11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 31.07.2022 till its actual 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.
  - iii. The Authority observes that the project has not been registered and the respondent is in violation of Section 3 of the Act, 2016. The Authority directes the Planning branch of the Authority to enquire into the matter and initiate suo motu proceedings against the promoter, if violation of section 3 is prima facie found.
21. Complaint stands disposed of.
22. File be consigned to the registry.

Dated: 16.10.2024



**HARERA**

**(Ashok Sangwan )**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram