

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

Complaint no.: 3760 of 2024
Date of filing of complaint: 29.08.2024
Date of first hearing: 12.12.2024
Date of decision: 07.04.2026

1. **Mayank Kaushik**
2. **Mahesh Kaushik**

Both are R/o: - GMD Urban Square, Plot no. C.P 2 &
3, Sector 9, Vashundhara, Ghaziabad, U.P.

Complainants

Versus

M/s Signature Global Homes Pvt. Ltd.
Regd. Office at: - Ground floor, tower A, Signature
Towers, South City-1, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Ravi Shankar Garg (Advocate)
Sh. Venket Rao (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 thereunder 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 complainants, 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	"Signature Global Park IV", Sector 36, Village Dhunela, Gurugram
	Project Area	15 Acres
2.	Nature of the project	Affordable Plotted Colony under DDJAY
3.	DTCP license no.	117 of 2019 dated 12.09.2019 valid upto 11.09.2024
	Name of licensee	Narender Kumar S/o Ram Sarup
4.	RERA Registered/ not registered	Registered 29 of 2020 dated 08.10.2020 upto 30.06.2021
5.	Plot no	4-A56-3F, at plot 56, 3 rd floor (As per BBA at page 32 of complaint)
6.	Unit admeasuring area	643.03 sq. ft. (carpet Area) 147.04 sq. ft. (balcony area) (As per BBA at page 37 of complaint)
7.	Date of builder buyer agreement	26.08.2021 (Page no.28 of complaint)
8.	Possession clause as per builder buyer agreement	<p>7. POSSESSION OF THE RESIDENTIAL UNIT</p> <p>"7.1 Schedule for possession OF THE SAID RESIDENTIAL INDEPEBDENT FLOOR: - The Developer agrees and understands that timely delivery of possession of the Retail unit to the Allottee(s) and the restricted common areas to the association of allottees or the competent Authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the agreement.</p> <p>The promoter assures to hand over possession of the residential independent floor along with parking as per agreed</p>

		<p><i>terms and conditions by 30th July 2022 unless there is a delay due to "force Majeure", Court order. Government Policy /guidelines, decision or any other even/reason of delay recognized/allowed in this regard by the Authority affecting the regular the development of the real estate project....."</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(As per BBA at page 47 of complaint)</p>
9.	Due date of possession	30.07.2022(Note:- Due date of possession mentioned in the possession clause)
10.	Total sale consideration	Rs.58,91,167/- (As per BBA, page 80 of complaint)
11.	Total amount paid by the complainants	Rs.54,04,649/- (As per customer ledger dated 22.11.2023 at page no. 80 of complaint)
12.	Payment plan	Possession linked payment plan (Page no. 63 of the complaint)
13.	Occupation certificate	07.11.2022
14.	Offer of possession	01.12.2022 (Page no. 21 of reply)
15.	Payment reminder letter	27.02.2023(Page no. 9 and 10 of reply)
16.	Pre cancellation letter	06.03.2023(Page no. 12 of reply)
17.	Cancellation notice dated	20.03.2023(Page no. 14 of reply)
18.	Final settlement letter dated	22.04.2023(Page no. 15 of reply)
19.	Amount refunded by the respondent to the complainants	Rs.23,89,922/- (Two cheque of Rs.11,94,961/- issued by the respondent company in favour of the allottees on 18.07.2024)

B. Facts of the complaint:

3. The complainants have made the following submissions by filing the present complaint: -
 - a) That the grievance of the complainants relates to breach of contract, false promises, gross illegal & unfair trade practices and deficiencies in services committed by the respondent in regard to a unit in affordable plotted colony situated in the revenue estate of village Hariahera Sector 36, Sohna, Distt.

Gurugram, Haryana. On the basis of registered agreement for sale dated 26.08.2021, the complainants were allotted the unit no A-56, 3rd floor. The basic sale price of the said unit was Rs. 50,00,000/-. The respondent later on, voluntarily and against the backdrop of false and frivolous matters with a view to create evidence against the complainants unilaterally enhanced the unit cost after receiving almost half of unit cost and under pressure execute agreement for sale of sum of Rs. 55,52,118/- which included basic unit charge, power backup, applicable taxes, car parking, IFSD etc., as per details given in the agreement for sale.

- b) That the sales representative of the respondent's company had presented a brochure along with floor plans indicating unit available for sale on 08.08.2020. After negotiations, it was principally agreed between the respondent and the complainants to purchase a residential apartment, admeasuring carpet area of 643.04 Sq.ft. and balcony area of 147.04 Sq.ft. on 3rd floor. The consideration for the sale of the unit was calculated on the basis of lump-sum. The total sale consideration of the said apartment was fixed at Rs. 50,00,000/- and the respondent illegally enhanced the unit cost after receiving almost half of unit cost and under undue influence and misrepresentation executed agreement for sale for sum of Rs. 55,52,118/- which included basic unit charge, power backup, applicable taxes, car parking, IFSD etc. apart from the above, no other amount except stamp duty/registration charges was ever indicated to be paid. Possession was to be handed over by 30.07.2022. Having agreed in principle to the aforesaid, an agreement for sale was executed between the parties on 26.08.2020. The complainants had made almost half of the payment prior to executing the agreement to sale.

- c) That time was the essence of the contract. It had been agreed that if the possession is not delivered within the promised period, then the allottee would be compensated as per terms and conditions of the buyer's agreement.
- d) That the complainants strictly adhered and followed the payment plan and paid Rs. 36,10,000/- to the respondent. The payments were made well in time as and when demands were raised by the respondent. The complainants received the illegal demand of enhanced amount from the respondent and to rectify the illegal demand the complainants tried to contact it's AGM-Sales" but they came to know that she has left her job and after that the complainants did not receive any response from the respondent. The complainants sent various emails as well as visited Gurgaon office but the officials of the respondent did not give any heed and threatened that if the complainants does not agree to deposit the excess amount the respondent shall have power to cancel the unit. The defendant without intimating the complainants and after receiving sum of Rs. 36,10,000/- from the complainants cancelled the allotted unit. The complainants did not receive any intimation prior to unit cancellation.
- e) That the complainants were shocked on 22.11.2023 when they visited the office of respondent and received the intimation that respondent had cancelled the unit no. A-56, 3rd floor allotted to the complainants.
- f) That the complainants also bonafidely believed that the project is still not complete for habitation, therefore, the respondent was requested to indicate as to on which date the CC for the tower in question was applied for and when it was granted. However, no such information was given by the respondent.

- g) That the respondent would clearly appreciate that the complainants had made all payments immediately upon demand and were ready and willing to make payments, immediately which are justified as per the agreement between the parties, but the sare not willing to succumb to the respondent's unconscionable and unjustified demands, as indicated in the statement of account it is reiterated that the complainants were willing to make all payments previously agreed to, within 5 working days, provided the respondents were willing to recall the respondent's cancellation letter (if any).
- h) That the complainants have spent her lifetime savings in the said project with the hope that she along with her family would shift in that project in Gurgaon. The type of development in the project has shattered all hopes of complainants to have them own residential flat in the said society in future and on the contrary his hard-earned money seems to have been misappropriated, mis-utilized to the detriment interest of complainants by respondent.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):

- I. Direct the respondent to issue a correct and true statement of account with agreed unit cost as per booking receipt.
- II. Direct the respondent to withdraw their wrong and illegal letter of cancellation and restore the unit no. A-56, 3rd floor, Signature Global Park-4, Sector 36, Sohna, Distt. Gurugram, Haryana in the name of complainants after receiving remaining/balance amount and also direct to the respondent to execute document for transfer of ownership in the name of complainants.
- III. Direct the respondent to pay the compensation to the complainants for harassment and mental torcher of the complainants and also direct them to pay litigation expenses to the complainants.

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 the respondent.

6. The respondent has contested the complaint on the following grounds by way of reply dated 12.12.2024: -

- a) That at the outset, it is submitted that averments made against the respondent in the complaint are wrong, frivolous and misconceived hence they are denied unless specifically admitted hereinafter. The fact, allegation, averment, submission and statement which may not have separately denied any such fact, allegation, averments, submissions and statement should not be read as an admission of the contents of the complaint in any manner whatsoever.
- b) That the possession of the unit has been offered by the respondent through email dated 01.12.2022 and vide offer of possession letter dated 01.12.2022. However, the complainants failed to make the payment therefore the unit of the complainants failed to make the payment therefore the unit of the complainants has been cancelled.
- c) That the respondent sent reminder dated 27.02.2023 and pre-cancellation notice dated 06.03.2023. However, the complainants did not make the payment. Further the respondent sent cancellation notice dated 20.03.2023 and through the said notice unit of the complainants had been cancelled. However, as a good will gesture the respondent has given the last and final opportunity to deposit the overdue amount within 15 days from the date of dispatch of said cancellation notice, but the complainants again failed to make the payment against overdue amount. Further the respondent vide

email dated 22.04.2023 sent the final settlement letter and thereafter refund remaining amount through cheque bearing no. 801560 dated 04.07.2024 and 801561 dated 04.07.2024. Above said were cleared on 18.07.2024 and complaint is filed on 29.08.2024.

- d) That the said unit is completed therefore the respondent had offered the possession. However, the complainants failed to make the payment due to which unit of the complainants has been cancelled.
- e) That the respondent has informed the complainants about the termination as well as of settlement amount through email dated 20.03.2023 and 22.04.2023 respectively.
- f) That the unit has been cancelled after adopting the due procedure and further the complainants vide email dated 10.05.2024 has acknowledged the said unit has been sold. Hence the said prayer of the complainants become infructuous.

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

8. 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 submissions made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. 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) The promoter shall-

(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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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 Relief sought by the complainants.

F.I Direct the respondent to withdraw their wrong and illegal letter of cancellation and restore the unit no. A-56, 3rd floor and also direct to the respondent to execute document for transfer of ownership in the name of complainants.

13. In the present case, the complainants booked a unit in the project of the respondent namely "Signature Global Park IV" situated at Sector- 36, Sohna, Gurugram and a builder buyer agreement was executed between the parties on 26.08.2021, wherein residential independent floor no. 4-A56-3F at plot no A-56, admeasuring 643.03 sq. ft. carpet area and 147.04 sq. ft. balcony area was

allotted to the complainants. As per clause 7 of the agreement, the respondent was required to hand over possession of the unit by 30.07.2022.

14. The complainants in the present complaint are seeking relief w.r.t. the withdrawal of cancellation letter dated 20.03.2023 and stated that the letter dated 20.04.2023 is illegal.
15. The plea of the respondent is otherwise and stated that the demands were raised as per payment plan annexed with builder buyer's agreement dated 26.08.2021 and the complainants have made payment of Rs. 54,04,649/-. However, reminder letter was issued on 27.02.2023 following a pre-cancellation 06.03.2023 but despite the follow ups the complainants failed to act further and comply with their contractual obligations and therefore the unit of the complainants was finally terminated vide letter dated 20.04.2023.
16. Now the question before the Authority is whether the cancellation issued vide letter dated 20.04.2023 is valid or not?
17. On consideration of the documents available on record and the submissions made by both parties, the Authority is of the view that the builder-buyer agreement was executed between the complainant and the respondent on 26.08.2021. The sale consideration of the unit was Rs.58,91,167/-, out of which the complainant paid a total amount of Rs.54,04,649/-. The Occupation Certificate for the tower in question was obtained by the respondent on 07.11.2022, and thereafter, possession of the plot was offered to the complainant vide an offer of possession letter dated 01.12.2022, subject to payment of outstanding dues. The complainant defaulted in making the required payment, and consequently, the respondent issued a demand letter dated 27.02.2023, calling upon the complainant to fulfill his obligation to pay the due amount. However, this did not yield any positive result, which

ultimately led to the issuance of a pre-cancellation letter dated 06.03.2023, followed by a cancellation letter dated 20.03.2023. Thereafter, a final settlement letter was issued on 22.04.2023, and an amount of Rs. 23,89,922/- was refunded to the complainant. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, the cancellation of the plot, in accordance with the terms and conditions of the payment plan annexed to the buyer's agreement dated 26.08.2021, is held to be valid. However, while cancelling the unit, the respondent was under an obligation to return the paid-up amount after making such deductions as prescribed under the law.

18. The issue with regard to deduction of earnest money on cancellation of a contract arose in case 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 of 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.
20. It is pertinent to note that the respondent issued two cheques of Rs. 11,94,961/ in favour of the allotment on 18.07.2024. So, the respondent is directed to refund the paid-up amount to complainant after deducting 10% of sale consideration being earnest money along with interest at the rate of 10.80% (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 on such balance amount from the date of cancellation i.e., 20.03.2023 till 18.07.2024 when a cheques were issued amounting to Rs. 23,89,922/- has been issued. After adjusting the said cheques, the respondent shall refund the remaining balance amount along with interest

@10.80% per annum from 18.07.2024 till the date of actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent to pay the compensation to the complainants for harassment and mental torcher of the complainants and also direct them to pay litigation expenses to the complainants.

21. The complainants in above-mentioned relief is seeking compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority.

22. 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 cancellation is valid. The respondent/builder is directed to refund the deposited amount after deducting 10% of the sale consideration along with an interest@10.80% on such balance amount from the date of cancellation i.e., 20.03.2023 till 18.07.2024 when the cheques were issued amounting to Rs. 23,89,922/- has been issued. After adjusting the said cheques amount, the respondent shall refund the remaining balance amount along with interest@10.80% per annum from 18.07.2024 till the date of actual



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

- 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.

23. Complaint stands disposed of.

24. File be consigned to the registry.


Phool Singh Saini
(Member)


Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram
07.04.2026