

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

Complaint no.	160 of 2021
Date of filing complaint	05.02.2021
First date of hearing	30.04.2021
Date of decision	29.07.2022

Sunita Upadhyay w/o Sh. Abhilash Shukla R/o: Flat no. 1982, Arun Vihar, Sector 37, Gautam Buddha Nagar, Noida, Uttar Pradesh-201301	Complainant
Versus	
GLS Infratech Pvt. Ltd. through its Chairman/Managing Director Registered Office: 217 A, 2 nd Floor, JMD Pacific Square, Sector 15, Part II, Gurugram, Haryana-122001	Respondent
CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainant in Person	Complainant
Sh. Sandeep Chaudhary (Advocate)	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 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 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.N.	Particulars	Details
1.	Name of the project	"Arawali Homes", Sector-4, Gurugram
2.	Project Area	10 acres
3.	Nature of project	Affordable Group Housing Colony
4.	DTCP license no. and validity status	110 of 2014 dated 14.08.2014 valid upto 11.04.2020
5.	RERA registered/not registered	232 of 2017 dated 19.08.2017 valid upto 13.08.2019
6.	Allotment Letter	08.08.2019 (Page 24 of the complaint)
7.	Unit no.	Unit no. T11-906, 9 th Floor, Tower 011 (Page 24 of the complaint)
8.	Unit measuring	467.80 sq. ft. (Page 24 of the complaint)
9.	Date of execution of flat buyer's agreement	26.09.2019 (Page 41 of the Complaint)



10.	Possession clause	<p>5.1.1 Handing over of possession:</p> <p><i>"Subject to Clause 12 herein or any other circumstances not anticipated and beyond the control of the Developer or any restraints / restrictions from any courts / Authorities but subject to Purchaser(s) having complied with all the terms and conditions of this Agreement and not b in default under any of the provisions of this Agreement including but not limited to tin payment of the Total Price and having complied with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to offer the handing over the physical possession of the Flat to the Purchaser(s) within a period of forty eight (48) months from Commencement Date".</i></p> <p>Commencement Date (Clause 1.10 of BBA): Date of Approval of the building plans or the date of obtaining the environmental clearance for the AGH colony which is later.</p>
11.	Building Plan approval	01.10.2014 (As per information provided by planning department)
12.	Environment Clearance	12.04.2016 (As per information provided by planning department)
13.	Due date of possession	12.04.2020 (Calculated 48 months from environment clearance as the same is later) + 6 months of COVID extension= 12.10.2020



14.	Total sale consideration	Rs. 20,29,472/- (As per BBA on page 48 of the complaint)
15.	Total amount paid by the complainant	Rs. 19,92,792.32/- (As alleged by complainant)
16.	Offer of Possession	12.06.2020 (Page 91 of the Complaint)
17.	Surrender of Unit	18.09.2020 (as alleged by the complaint)
18.	Cancellation charges information by respondent to complainant	23.11.2020 (Page 107 of the complaint)

B. Facts of the complaint:

3. The complainant booked a flat under the Pradhan Mantri Awas Yojna with the respondent in the project named "Arawali Homes" by paying a booking amount of Rs. 86,560/- vide cheque bearing no. 681617 on 02.07.2019.
4. Thereafter, vide letter dated 08.08.2019, the complainant was allotted unit no. T11-906, 9th floor, Tower-011. The complainant also applied for Home Loan under PMAY Scheme with ICICI bank vide application no. 7726731108 which was duly approved and sanctioned an amount of Rs. 20,00,000/- vide sanction letter dated

- 22.08.2019. However, the said loan amount could not be disbursed due to delay in execution of BBA by the respondent.
5. Vide emails dated 09.09.2019, 10.09.2019 and 16.09.2019, the complainant informed the respondent of non-disbursal of the loan amount due to delay on the respondent's part. Thereafter, the Builder Buyer Agreement was finally executed between parties on 26.09.2019.
 6. However, between September 2019 to January 2020, the bank did not disburse the loan amount as registration of the said project got expired due to default on part of the respondent. The RERA registration only got renewed on 02.01.2020 after which the bank started disbursing amounts.
 7. Thereafter, the respondent raised various demands dated 11.10.2019, 01.11.2019 and 10.06.2020. The demand letter dated 10.06.2020 called upon the complainant to pay Rs. 3,28,540/- towards miscellaneous charges and the same also included late payment fees of Rs. 63,471/-. However, the complainant never delayed any payments because of her own fault. The payment was delayed because of expiry of RERA registration of the respondent. In the meantime, the possession of the unit was offered on 12.06.2020.
 8. The complainant made representations regarding the late payment charges but to no avail. After being tired of no response from the

respondent, the complainant visited the respondent's office where she was assured that the needful will be done but nothing was done.

9. Thereafter, on 18.09.2020, the complainant enquired about the cancellation charges from the respondent. After enquiring about the same, the complainant went directly to the bank to get the foreclosure letter. The home loan foreclosure letter was issued on 21.10.2020.
10. That in between 26.10.2020 to 28.10.2020, the complainant submitted the foreclosure letter to the respondent. The respondent asked the complainant to make a further payment of Rs. 37,012.32/- as there was difference in amount paid by the bank during disbursement of home loan and principal amount charged by the bank at the time of foreclosure letter.
11. The respondent then sent a mail to the complainant giving details of the cancellation charges which was in contradiction to the to the notification date 05.07.2019 passed by Town and Country planning Department, Haryana. The said cancellation charges also included interest accrued till cancellation which is nothing but late payment charges which the complainant was asked to pay because of respondent's mistakes. The cancellation charges also include tax reversal amount of Rs. 1,44,050/-. But instead of giving credit of the same to the complainant, the same was illegally added into total cancellation charges.
12. The complainant has till now paid Rs. 19,92,792.32/- out of Rs. 20,29,472/- and is also paying EMI for the home loan facility obtained ever since cancellation of the unit.



13. Thus, the complainant is left with no other option but to file the present complaint 05.02.2021.

C. Relief sought by the complainant:

14. The complainant has sought following relief(s):

i. Direct the respondent to withdraw the unwarranted cancellation charges and release the amount due towards the complaint that is approximately Rs. 19,92,792.32/- (less cancellation charges) along with interest @24% p.a.

ii. Direct the respondent to pay Rs. 5,00,000/- for mental agony and harassment along with interest, Rs. 2,00,000/- for negligence and delay on part of respondent along with interest and litigation charges to the tune of Rs. 50,000/-.

D. Reply by respondent:

The respondent by way of written reply dated 25.02.2021 made the following submissions:

15. That the complaint is neither tenable nor maintainable and the complainant does not have any cause of action to peruse the present complaint.

16. It was submitted that the respondent has been duly constructing the project named as Arawali Homes at Sector-4, Sohna, Gurugram.

17. That the prime concern and cause of the complainant is against the levying of cancellation charges along with taxes on the complainant wanting to have the unit cancelled and the amounts refunded upon foreclosure from the financing bank in which the unit is currently



mortgaged. The unit stands mortgaged as on date and the bank is not a party to the case.

18. It was further stated that the respondent company despite difficult circumstances of National Lockdown in wake of prevention of COIVD 19 infection and delays on the part of Government Authorities in not allowing various permissions and sanctions, including sanction of revised building plans, RERA registration, Construction bans for more than one month every year as ordered by NGT, delay in grant of occupation certificate and other factors beyond the control of the respondent company, has duly completed the project to the best of abilities and does not in any manner gain anything in being late in completion of the project.

19. The complainant despite the obligations being executory on the part of the respondent, is illegally trying to evade the payments and arm-twisting by misusing the process of this Hon'ble Authority forcing the respondent to contest the present case and spread various false and malicious mongering statements in the minds of other allottees.

20. The events qua application, allotment, dues have been made by the respondent all are a matter of record. However, the transaction of the complainant with the ICICI Bank and the contention that the payment could not be disbursed since the registration of the project expired due to the default on the part of the respondent is all wrong

and denied. The alleged emails are nothing but an attempt to take wrongful advantage of her own wrongs and failure to make timely payment to the respondent. It is wrong and denied that the respondent ever charged any uncalled amounts from the complainant.

21. It was submitted that the respondent has duly completed obligation of completion of the project and offering the possession of the same within the 9 months of execution of the Builder Buyer Agreement.
22. It is the complainant who wishes to surrender the unit and thus, the respondent is very much entitled to charge cancelation charges, outstanding interest, 5% of the flat cost along with the statutory 25,000/ rupees along with applicable taxes as cancelation charges according to Notification dated 05.07.2019 amending the Affordable Housing Policy, 2013. Therefore, the complainant does not have any cause of action to pursue the present complaint.
23. All other averments made in the complaint were denied in toto.
24. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

25. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 completed 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 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.

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. Entitlement of the complainant for refund:

F.1. Direct the respondent to withdraw the unwarranted cancellation charges and release the amount due towards the complaint that is approximately Rs. 19,92,792.32/-(less cancellation charges) along with interest @24% p.a.

26. The complainant is an allottee in the project "Arawali Homes", an Affordable Group Housing Colony developed by the respondent. Vide letter dated 08.08.2019, the complainant was allotted unit bearing no. T11-096, 9th Floor, Tower-011. The complainant had availed loan facility from ICICI Bank of an amount of Rs. 20,00,000/- Subsequently, a BBA was executed between the parties dated 26.09.2019. After the execution of BBA, the RERA registration of the project got expired but the same was restored in January 2020. The possession of the unit was offered on 12.06.2020 and the demand letter along with the offer of possession contained late payment charges. The same were levied because the concerned bank did not disburse the amount in timely manner for reasons not known. The complainant was not willing to pay the late payment charges and hence made representations to the respondent and thereafter, surrendered the unit and orally communicated the same to complainant on 18.09.2020. After that, the foreclosure letter was given by the bank and the cancellation charges were communicated by the respondent to the complainant. The complainant here is challenging the cancellation charges communicated to her.

27. It is pertinent to mention Clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 which states as under:

“On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following:-

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat;
(cc)	Upto 2 years from the date of commencement of the project	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;

Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.”

28. Since, the surrender of the unit by the complainant was done in 2020, hence the respondent is entitled to forfeit amounts in accordance with amended section 5(iii)(h). The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the

date of grant of environment clearance i.e., 12.04.2016 is later and hence, the same would be considered as date of commencement of project.

29. The complainant, in this case, surrendered the unit in 2020 i.e., after 4 years from the date of commencement of project. Hence, the respondent is entitled to forfeit 5% of the flat cost in addition to Rs. 25,000 as mandated by the Policy of 2013. The respondent is entitled to forfeit 5% of Rs. 20,29,472/- i.e., Rs. 1,01,473.6/- in addition to Rs. 25,000/-. Thus, the respondent in total is entitled to forfeit only Rs. 1,26,473/- and return the rest of the amount to the complainant along with interest at the rate 9.80% [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 from the date of surrender i.e., 18.09.2020 till the date of actualisation within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).

F.2 Compensation for mental agony and legal expenses:

30. The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

31. 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 promoters as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to forfeit an amount not exceeding Rs. 1,26,473/- i.e., 25,000/- plus 5% of cost of the flat as per Affordable Housing Policy and refund the balance amount of Rs. 18,66,319.32/- to the complainant along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation till actual date of refund of the deposited amount.
- 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.

32. Complaint stands disposed of.

33. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2022