

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

Complaint no. : 3791 of 2020
Date of filing of complaint: 05.11.2020
First date of hearing: 23.12.2020
Date of decision : 09.08.2022

1. Mr. Syed Md Lutfullah
2. Syed Fahad Ahmad
Both R/o: Magadh Mahila Centre, Near Japani House,
Aliganj, Gaya (Bihar)

Complainants

Versus

1. M/s GLS Infratech Pvt. Ltd.
R/o. 707, 7th Floor, JMD Pacific Square, Sector-15
Part-2, Gurugram.
2. Dewan Housing Finance Corporation Ltd.
R/o. Warden House, 2nd floor, Sir P.M Road, Fort,
Mumbai

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Harshit Batra
Shri Sandeep Chaudhary
Ms. Manita Mehlawat

Advocate for the complainant
Advocate for the respondent no.1
Advocate for the respondent no. 2

ORDER

1. The present complaint has been filed on by the complainants/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 there under or to the allottee as per the agreement for sale executed inter se the parties.

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:

Sr. No.	Particulars	Details
1.	Name of the project	"Arawali Homes Project", situated in Sector 4, Sohna, District- Gurugram, Haryana
2.	Project area	13.39375 acres
3.	Nature of the project	Affordable Group Housing Colony
4.	RERA Registration	Registered vide no. 232 of 2017 dated 19.09.2017ffordable Group Housing Colony
5.	DTCP License no.	110 of 2014 dated 14.08.2014 54 of 2019 dated 08.03.2019 valid up to 07.03.2024 valid up to 11.04.2020
6.	Date of building plans	01.10.2014 (As per information provided by planning department)
7.	Date of environment clearance	12.04.2016 [Page no. 11 of reply]

8.	Date of builder buyer agreement	31.12.2016 (Page no. 13 of the complaint)
9.	Unit No.	102, 1 st floor, Tower/block- 5 (Page no. 16 of complaint)
10.	Unit area admeasuring	467 sq. ft. (Page no. 16 of complaint)
11.	Possession clause	The developer proposes to offer possession of the said apartment within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. (As per affordable policy)
12.	Due date of possession	12.04.2020+ 6 months = 12.10.2020 (Calculated from the date of environment clearance plus 6 months of grace period) 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.
13.	Total Sale Consideration	Rs. 17,31,200/- (As per page 14 of the complaint)
14.	Amount Paid by the Complainants	Rs. 2,74,117 /- (As per page 11 of complaint)
15.	Occupation certificate	Obtained on 22.05.2020 as per page no. 25 of reply
16.	Offer of possession	Not Annexed
17.	Tripartite Agreement	09.01.2017 (As per on page 25 of complaint)

B. Facts of the complaint

3. The complainants booked an apartment on 07.10.2016 and were allotted unit no. 102 in tower no. 5. A booking amount of Rs. 86,560/- was paid by the complainants and after which a buyer's agreement was executed between the parties on 31.12.2016 for a total sale consideration of Rs. 17,31,200/-.
4. That being disabled and retired, the complainant no. 1 was unable to pay the entire amount himself and hence wanted to take a loan from a housing bank. So they took a loan from the respondent no. 2 as it was on the panel of respondent/ builder. The complainants were not given an opportunity to select a housing bank of their choice and the inherent right of freedom of contract of the complainants was exploited by the respondents/ builders.
5. That on pursuance of the allotment, a tripartite agreement was executed on 09.01.2017 between the parties. A loan amount of Rs.13,00,000/- was sanctioned to the complainants vide loan account no. 00043731/Application no. 01414519. According to that agreement, it was the obligation of the respondent no. 2 to timely disburse the number of instalments to the respondent/ builder.
6. After the initial payment, the respondent/ builder demanded further payments and the financier did not make any attempt to make such payments. It breached its responsibility to pay to the respondent/ builder on their behalf but failed to pay the same. The complainants communicated about this delay to the respondent/ builder and requested for not charging delay interest since as the same was not caused due to their fault vide email dated 22.10.2016. It accepted their request vide phone call and email dated mentioned above.
7. That even after making substantial payments and not abiding by the respondent no. 2 of its responsibility, the complainants were made to

suffer to great extent. The respondent no. 2 gave a foreclosure letter on 21.08.2019 and attained a refund of Rs.4,26,770/-. The respondent no. 1 gave immediate refund to the respondent no. 2. It has to be noted that the amount disbursed by respondent no. 2 of was only of Rs. 3,46,240/-. The remaining amount of Rs.91,723/- was disbursed in lieu of the insurance for the allotment to a sister company of the respondent no. 2, DHFL Pramerica Life Insurance and Chola MS General Insurance. This is prima facie evident of the connivance between the respondents and the respondent of 2 has wrongfully disbursed an extra amount of Rs 80,530/- which amount belonged to the complainant.

8. That after being helpless and tired by the conduct of both the respondents, the complainants expressed an interest in obtaining refund of the amount paid by them. The respondent/ builder cancelled the allotment of the complainants but failed to refund their paid-up amount despite repeated plea , leading to filing of the present complaint.

C. Relief sought by the complainants:

- a. To direct the respondents to refund the entire amount paid by the complainants along with interest.
 - b. To direct the respondents to pay compensation of Rs.10,00,000/- for mental harassment and trauma suffered by the complainants.
 - c. To direct the respondents to pay Rs. 2,00,000/- as the litigation cost.
9. Though respondent no. 2 put in appearance through its counsel but failed to file any response leading to deciding the matter in the absence of its pleadings.

D Reply by the respondent/ builder:

The respondent no. 1 has contested the complaint on the following grounds:

10. The respondent/ builder admitted the complainants to be its allottees under the affordable housing policy of the allotted unit for a total sale consideration detailed above and execution of buyers agreement between the parties with regard to the allotted unit .
11. It was pleaded by the answering respondent that there is no deficiency of service on its part and the averments made in this regard are wrong and against the facts.
12. It was further pleaded that though a tripartite agreement was entered into between the parties on 09.01.2017 but the primary responsibility to pay the amount due against the allotted unit was that of the allottees.
13. It was further stated that though the complainants paid sum amount against the allotted unit to the answering respondent but failed to pay on demands being raised from time to time leading to issuance of reminders and ultimately cancellation of the unit. After the cancellation, the amount due to the financial institute was paid and the remaining amount is to be paid by the allottees to it.
14. It was further pleaded that besides Rs. 25000/-, the answering respondent was entitled to deduct statutory charges as per the policy of 2013.
15. Lastly, it was pleaded that neither the complainants are entitled to any refund of the paid-up amount, nor the authority has jurisdiction to proceed with the complaint.
16. All other averments made in the complaint were denied in toto.
17. 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

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

18. 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

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.

19. 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 To direct the respondent/builder to refund the entire amount paid by the complainants along with interest.

20. Some of the admitted facts of the case are that the complainants are seeking refund of the amount paid to the respondent/builder. They were allotted unit bearing no. 102, 1st floor, Tower/block-5 of the project namely Aravali Homes , sector-4 Sohna, district Gurugram under the affordable housing policy 2013 for Rs. 17,31,200/- .A builder buyer agreement in this regard was executed between the allottees and the promoter on 03.12.2016. Thereafter, a tripartite agreement was executed between the parties, whereby a loan amounting to Rs. 13,00,000/- was sanctioned in favour of the complainants. There is no proof about following of due procedure while cancelling the allotted unit as per affordable housing policy 2013, which prescribes under:

" 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 news-paper 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".

21. Though it is pleaded on behalf of the respondent / builder that it followed the due procedure before cancellation of the allotted unit but no document / issuance of notice by way of publication has been placed on file.

However, it has come on record that after cancellation, the respondent/ builder has returned the amount so received from the respondent no. 2 by way of loan on behalf of complainants.

22. The subject unit was cancelled as per the reply of the respondent/builder in para no. 3. Accordingly, the cancellation is to be covered by clause 5(iii) and the promoter is directed to deduct Rs.25,000/- only and make payment after adjustment of the amount already paid to Dewan Housing Finance Corporation limited i.e respondent no. 2. As per statement of account at page 32 of the complaint, the amount received by the promoter as per applicant ledger till 09.07.2019 has been shown to be Rs. 6,20,357/- . Out of that Rs. 4,26,770/- have already been paid to the respondent no. 2 and now Rs. 25,000/- are to be deducted from the balance amount of Rs. 1,93,587/-. Accordingly, the amount payable to the complainants comes to Rs.1,68,587/- which the respondent/ builder is liable to pay to them.

F.II. To direct the respondents to pay the compensation of Rs. 2,00,000/- as the litigation cost and compensation for mental agony, torture, harassment and trauma suffered by the complainants.

23. The complainants in the aforesaid head are seeking relief w.r.t 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. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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

advised to approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the Authority:

24. 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 /promoter is directed to refund the balance amount of Rs. 1,93,587/- after retaining a sum of Rs. 25,000/- within a period of 90 days along with interest on that amount from the date of cancellation till its actual payment.
- ii. The above-mentioned amount be refunded to the complainants within a period of 90 days and failing which legal consequence would follow.

25. The Complaint stands disposed of.

26. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2022