

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

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| Complaint no. : | 3630 of 2021 |
| Date of filing complaint: | 03.09.2021 |
| First date of hearing: | 23.11.2021 |
| Date of decision : | 20.10.2022 |

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| 1. Harish Bhardwaj R/O: H.no. 154, sector- 13 Pocket B Metro View Apartments, Dwarka, New Delhi | Complainant |
| Versus | |
| 1. GLS Infraprojects Pvt. Ltd. Regd. office: 311, 3 rd floor, JMD Pacific Square, Sector-15, Part-II Gurugram,122001 | Respondent |

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|----------------------------------|---------------|
| CORAM: | |
| Shri Vijay Kumar Goyal | Member |
| Shri Ashok Sangwan | 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 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 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 | "Avenue-51", Sector 92, Gurugram, Haryana | |
| 2. | Project area | 6.3125 acres | |
| 3. | Nature of the project | Affordable Group Housing Colony | |
| 4. | DTCP license no. and validity status | 110 of 2014 dated 14.08.2014 valid up to 11.04.2020 | 54 of 2019 dated 08.03.2019 valid up to 07.03.2024 |
| 5. | Name of licensee | GLS Infratech Pvt. Ltd. | |
| | RERA Registered/ not registered | Registered vide no. 233 of 2017 dated 19.09.2017 | |
| 6. | Date of environment clearances | 12.04.2016 [Page no. 11 of reply] | |
| 7. | Date of building plans | 20.03.2017 (As per DTCP website) | |
| 8. | Unit no. | E-804 on 8 th floor in tower-E (Page no. 31 of complaint) | |
| 9. | Unit area admeasuring | 640 sq. ft. (Page no. 31of complaint) | |

| | | |
|-----|--|--|
| 10. | Date of execution of agreement to sell | Not signed |
| 11. | Possession clause | 8.1 All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. |
| 12. | Due date of possession | 20.03.2021 (Calculated from the date of building plan) |
| 13. | Total sale consideration | Rs.25,87,500/- (As per BBA on page 33 of complaint) |
| 14. | Amount paid by the complainant | Rs.7,24,501/- (As confirmed by both respondent and complainant) |
| 15. | Surrender letter | 23.07.2019 Confirmed by the respondent in facts on page 1 of reply. The complainant has also annexed a surrender letter but the same is not dated. Legal notice: 12.03.2020 (Page 61 of complaint) |
| 16. | Occupation certificate /Completion certificate | 15.03.2021 (As per on page 8 of reply) |
| 17. | Offer of possession | Not annexed |

B. Facts of the complaint:

3. The complainant vide application dated 24.05.2017 was allotted a residential apartment in the project namely "Avenue 51" and was allotted unit bearing no. E-802 on 8th floor in tower -E for a total sale consideration of Rs. 17,31,200/-.
4. The complainant till 23.08.2017 paid an amount of Rs. 5,95,126/- which was duly acknowledged by the respondent. The respondent sent apartment buyers agreement to the complainant which was to be signed within 30 days.
5. It is pertinent to mention that the complainant refused to sign the agreement as the agreement was against the affordable policy. On 15.06.2019 the complainant sent a mail to the respondent to seek refund for the amount paid by him.
6. The complainant visited the respondent's office number of times to seek clarification, but no response was shown to him from the respondent. On 13.06.2019 the complainant received email by the respondent to submit the required papers. On 12.03.2020 a legal notice was served to the respondent to seek refund and even a mail was sent to district town planner Gurugram to intervene.
7. The respondent refunded Rs. 3,78,317/- to the complainant's bank after deducting Rs. 3,46,184/-. As pleaded by the complainant that the respondent company took 1 year and 5 months to refund the amount paid by him.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the amount paid by the complainant to the respondent along with interest;
- ii. Direct the respondents to pay cost of litigation of Rs. 50,000/- in favour of complainant.

D. Reply by respondent:

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

9. It is stated that the respondent company has been duly engaged in the development of the Affordable Housing Project in the name of "GLS Avenue 51" at Sector 92 Gurugram and has duly abided by all its obligations and the development of the said project is already complete.
10. The complainant failed to maintain financial discipline of his payments and had only paid an amount of Rs. 7,24,501/- till 23.08.2017 and finally when he was not able pay the outstanding amounts he sought cancellation on 23.07.2019 upon which the respondent has duly cancelled the allotment and after deducting 3% of the total unit cost, outstanding interest, mandatory charges, and applicable taxes in all amounting to Rs. 3,46,184/-, duly refunded the amount of Rs. 3,78,317/- to the complainant.
11. The complainant deliberately and intentionally did not maintain the financial discipline of timely payment despite reminders dated 14.03.2018, 30.04.2018, 10.09.2018, 3.10.2018, 4.03.2019, 22.04.2019 nor he executed the agreement with the respondent, whereas the respondent has been duly performing its obligations of development and construction of the said project.

12. All the other averments made in the complaint were denied in total.
13. Copies of all the relevant do 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 submissions made by the parties.

E. Jurisdiction of the authority:

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

14. 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.

15. 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.
16. 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.*** SCC Online SC 1044 decided on **11.11.2021** and followed in ***M/s Sana Realtors Private Limited & others V/s 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."

Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)*, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Entitlement of the complainant for refund:

F. I Direct the respondent to give refund of the amount paid along with interest.

17. The complainant is an allottee in the project "Avenue 51", an Affordable Group Housing Colony developed by the respondent. Vide letter dated 08.08.2017, the complainant was allotted unit bearing no. E-802,8th floor, Tower-E. There has been no BBA executed between the parties, as pleaded by the allottee the agreement was against the affordable group housing policy. The allottee vide email dated 15.06.2019 mailed the respondent to refund the entire amount paid by him.
18. The complainant paid a total sum of Rs. 7,24,501/- till 23.08.2017. The complainant vide email dated 23.07.2019 surrender the unit allotted by him and seek for refund of the amount paid by him. The respondent upon the request of the complainant cancelled the unit and refunded an amount of Rs. 3,78,317/- and failed to pay the remaining amount to him. The complainant here is challenging the cancellation charges communicated to him.
19. 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:



"In clause no. 5 (Allotment Rates; Allotment & Eligibility Criteria), of the Annexure A of notification dated 19th August 2013: -

In clause 5(iii)h of policy dated 19.08.2013, the words "In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the colonizer", shall be substituted 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: -

| S. 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."

20. Since the surrender of the unit by the complainant was done in 2019, 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 building plan i.e., 20.03.2017 is later and hence, the same would be considered as date of commencement of project.

21. The complainant, in this case, surrendered the unit in 2019 i.e., after 2 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. 25,87,500/- i.e., Rs. 1,29,375/- in addition to Rs. 25,000/-. Thus, the respondent in total is entitled to forfeit only Rs. 1,54,375/- and return the rest of the amount to the complainant along with interest at the rate 10.25% [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., 23.07.2019 till the date of actualisation within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).
22. The respondent was under obligation to deduct the amount as per clause 5(iii)(h) of Policy, 2013 and duly return the balance amount. However, the respondent instead of deducting 5% of the flat cost in addition to Rs. 25,000 as specified under clause 5(iii)(h) of Policy, deducted amount over and above the said limit.
23. Therefore, the authority is of considered view that the said money over and above as specified above was still with the respondent builder and it was using the funds of the complainant. In view of aforesaid circumstances, the respondent is hereby directed to refund the excess amount deducted by it

over and above of deducting 5% of the flat cost in addition to Rs. 25,000/- as specified under clause 5(iii)(h) of Policy, along with interest @ 10.35% per annum from the date of surrender of the unit i.e., 23.08.2021 till the actual realization of the amount.

F.II Direct the respondents to pay cost of litigation of Rs. 1,00,000/- in favour of complainant.

24. 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.

G. Directions of the Authority:

25. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is hereby directed to refund the excess amount deducted by it over and above 5% of the flat cost in addition to Rs. 25,000 as specified under clause 5(iii)(h) of Policy along with interest @ 10.35% per on the refundable amount annum from the date of surrender of the unit i.e., 23.07.2019 till the actual realization of the amount.



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GURUGRAM

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- 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.

26. Complaint stands disposed of.

27. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.10.2022

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