

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.790 of 2022  
Date of Decision: 03.03.2023**

M/s GLS Infratech Private Limited having its registered office at: 217 A, 2<sup>nd</sup> Floor, JMD Pacific Square, Opposite Galaxy Hotel, Near 32 Milestone, Sector 15 Part II, Gurugram, through its AR Sh. Pankaj Sharma.

Appellant

Versus

Sunita Upadhyay w/o Abhilash Shukla, R/o Flat No.1982, Arun Vihar, Sector 37, Gautam Budha Nagar, Noida, Uttar Pradesh-201301.

Respondent

**CORAM:**

Justice Rajan Gupta	Chairman
Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

**Argued by:** Shri Sandeep Chaudhary, Advocate for appellant.

Respondent-Ms. Sunita Upadhyay in person.

**ORDER:**

**JUSTICE RAJAN GUPTA, CHAIRMAN:**

The present appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), by the appellant/promoter, against the order dated 29.07.2022, passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby

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complaint No.160/2021, filed by respondent/allottee was disposed of with the following directions: -

- “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.”*

2. As per the averments in the complaint, the respondent/allottee was allotted unit bearing No.T11-906, 9<sup>th</sup> floor, Tower-011, measuring 467.80 sq.ft. in the project of the appellant namely ‘Arawali Homes’ Sector-4, Gurugram, vide allotment letter dated 08.08.2019, under Affordable Housing Policy 2013 and obtained loan from the ICCI bank under ‘Pradhan Mantri Awas Yojna’ Scheme (hereinafter called ‘PMAY Scheme’). A ‘Flat Buyer’s Agreement’ (for brevity ‘the agreement’) dated 26.09.2019, was executed between the parties. As per Clause 5.1.1 of the agreement, the possession of the unit was to be handed over to the respondent/allottee

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within a period of 48 months from the commencement date. As per Clause 1.10 of the agreement, the commencement date is to be considered as the date of approval of the building plans or the date of obtaining the environmental clearance, whichever is later. The building plans were approved on 01.10.2014 and the environmental clearance was obtained on 12.04.2016 and thus the due date of possession comes to be 12.04.2020. The offer of possession of the unit was issued by the appellant on 12.06.2020.

3. It was pleaded by the respondent/allottee that she has paid an amount of Rs.19,92,792.32 against the total sale consideration of Rs.20,29,472/- up to the date of filing of complaint i.e. up to 05.02.2021. She pleaded that on surrender of the unit vide her letter dated 18.09.2020, the appellant/promoter intimated through its email about deduction of cancellation charges which included interest on delay in payment and also included Tax reversal amount of Rs.1,44,050/-. It was pleaded that the above said deductions were not in accordance with Affordable Housing Policy 2013 issued by the Town and Planning Department under which the unit was allotted to her. Aggrieved with the said deduction, the respondent/allottee had filed complaint before the learned Authority seeking following relief:-

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- 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/-.*

4. The complaint was resisted by the appellant on some technical grounds. It was also pleaded that the appellant is entitled to charge the cancellation charges, outstanding interest, 5% of the flat cost along with statutory amount of Rs.25,000/- with applicable taxes as cancellation charges according to notification dated 05.07.2019 amending the Affordable Housing Policy, 2013.

5. The appellant after controverting all the pleas raised by the respondent/allottee, sought dismissal of the complaint being without any merits.

6. The learned Authority after considering the pleadings of the parties and appreciating the material on record, passed the impugned order dated 29.07.2022, the relevant part of which is already reproduced above in paragraph no.1 of this order.

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7. We have heard Shri Sandeep Chaudhary, Advocate, for the appellant and the respondent in person and have carefully examined the record.

8. At the very outset, learned counsel for the appellant contended that it was the respondent/allottee who surrendered the unit. On surrender of the unit by the respondent/allottee, the appellant informed her vide email dated 23.11.2020 that she was entitled for a total refund of an amount of Rs.16,48,204/-.He asserted that the appellant is entitled to deduct the cancellation charges of Rs.25,000/-; Rs.4500/- on account of 18% GST on cancellation charges; Rs.86,157/- on account of 5% of the total flat cost; Rs.15,508.26 on account of 18% GST on 5% of the total cost of the flat; Rs.64,235/- on account of interest accrued till cancellation date; Rs.5138.80 on account of tax @ 8% of interest accrued; Rs.1,44,050/- on account of Tax Reversal. He further stressed that the appellant is entitled to recover the above said deductible amounts, total of the which comes out to be Rs.3,44,588/-, from the total amount paid by the respondent/ allottee as mandated by the policy of 2013 applicable in the present case. He further contended that the appellant is obliged to charge Goods and Service Tax on surrender of the flat @ 18% as GST on the said amount of Rs.25000/- and 5% of the flat cost. He submitted that the

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previously paid taxes could not be made to be borne by the appellant and if the applicant does not deduct Rs.1,44,050/- from the amount paid the same shall be loss of the appellant without any of its fault. He contended that the appellant is also entitled to levy the interest on outstanding payments and the same cannot be waived of in case of surrender of the unit. If that be so, the appellant would suffer prejudicially and the same shall give wrong signal to the allottees to withdraw from the project and avoid late payment charges.

9. With these contentions, it was asserted that the present appeal may be allowed. The appellant may be allowed to deduct an amount of Rs.3,44,588.20 on account of the reasons, as explained above, from the total amount paid by the respondent/allottee and the impugned order may be modified accordingly.

10. Per contra, the respondent/allottee has argued that these deductions from the total amount paid by her, as is being sought by the appellant, are not in accordance with the Haryana Govt. policy for Affordable Housing Policy 2013 under which the allotment was made to her. She asserted that the impugned order of the learned authority is just and fair and there is no merit in the appeal filed by the appellant and the same may be dismissed.

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11. We have duly considered the aforesaid contentions of both the parties.

12. Undisputedly, the respondent/allottee was allotted unit bearing No.T11-906, 9<sup>th</sup> floor, Tower-011, measuring 467.80 sq.ft. in the project being developed by the appellant namely 'Arawali Homes' Sector-4, Gurugram, vide allotment letter dated 08.08.2019, under the Affordable Housing Policy 2013, issued by the department of Town and Country Planning, Government of Haryana. The agreement between the parties was executed on 26.09.2019. As per Clause 5.1.1 of the agreement, the possession of the unit was to be handed over to the respondent/allottee within a period of 48 months from the commencement date. As per Clause 1.10 of the agreement, the commencement date is to be considered as the date of approval of the building plans or the date of obtaining the environmental clearance, whichever is later. It is also not in dispute that the building plans were approved on 01.10.2014 and the environmental clearance was obtained on 12.04.2016. Thus, the due date of possession comes out to be 12.04.2020. As per the impugned order, the learned Authority has granted a period of six months due to COVID and calculated the due date of possession as 12.10.2020 and the same is also not under challenge in this appeal. The offer of possession of the unit was issued by the appellant on

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12.06.2020. The respondent /allottee has paid an amount of Rs.19,92,792.32 against the total sale consideration of Rs.20,29,472/- up to the date of filing of complaint i.e. up to 05.02.2021. The respondent/ allottee surrendered the unit vide her letter dated 18.09.2020.

13. The only contention of the appellant in this appeal is that the respondent allottee has surrendered the unit of her own and therefore, the appellant may be allowed to recover the following charges:-

Total Paid	Rs.19,99,792.32
Less:	
Cancellation Charges	Rs.25,000/-
18% GST on cancellation charges	Rs.4500/-
5% of the total flat cost	Rs.86,157/-
18% GST on 5% of the total flat cost.	Rs.15,508.26
Interest accrued till Cancellation date	Rs.64,235/-
Tax @ 8% on interest accrued	Rs.5,138.80
Tax Reversal	Rs.1,44,050/-
Total Deduction	Rs.3,44,588/-
Net refundable	Rs.19,92,792.32 minus 344588.20 = Rs.16,48,204.12

14. The clause 5(iii) (h) of Affordable Housing Policy 2013 of the Government of Haryana, Town and Country Planning Department, as amended vide notification dated 05.07.2019 reads as under:

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*“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.*

<i>Sr No</i>	<i>Particulars</i>	<i>amount to be forfeited</i>
<i>(aa)</i>	<i>In case of surrender of flat before commencement of project.</i>	<i>Nil</i>
<i>(bb)</i>	<i>Up to 1 year from the date of commencement of the project:</i>	<i>1% of the cost of flat;</i>
<i>(cc)</i>	<i>Up to 2 years from the date of commencement of the project:</i>	<i>3% of the cost of flat</i>
<i>(dd)</i>	<i>After 2 years from the date of commencement of the project</i>	<i>5% of the cost of flat;</i>

*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.”*

15. Since the respondent/ allottee has surrendered the unit in the year 2020, therefore the amendment vide notification dated 05.07.2019 to the Affordable Housing Policy 2013 shall be applicable. Thus, the appellant can forfeit an amount @ 5% of the flat cost of Rs.20,29,472/- in addition to Rs.25,000/- from the total amount of Rs.19,99,792.32/- paid and respondent/ allottee and return an amount of Rs.18,66,319.32/-. The appellant has not put forward any logic or reason as to how any deduction more than what is stipulated in the said policy of 2013 can be allowed. Moreover, we are unable to understand that how the GST would be

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applicable on the amount being deducted by the appellant from the total amount paid by the allottee. The appellant has not given any logic or justification or reasoning as to how the appellant is seeking tax reversal amount of Rs.1,44,050/- from the respondent/ allottee as the appellant might have taken the credit against its output liabilities. The appellant has also not given any logic or justification or reasoning as to how the 'interest accrued till cancellation' or on which amount or on what account 'interest accrued till cancellation' and tax over the said interest accrued, is being claimed. In the given set of circumstances, we are not inclined to allow any deduction, more than what is permissible under the above said Affordable Housing Policy 2013 as amended vide notification dated 05.07.2019 by the Government of Haryana, from the total amount paid by the respondent allottee.

16. No other point was urged before us.

17. In view of our aforesaid findings, the present appeal filed by the appellant/promoter has no merit and is accordingly dismissed.

18. No order as to costs.

19. The amount deposited by the appellant/promoter i.e. Rs.22,62,700/- with this Tribunal to comply with the proviso to Section 43(5) of the Real Estate (Regulation and

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Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondent/allottee subject to tax liability, if any, as per law and rules.

20. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

21. File be consigned to the record.

Announced:  
March 03, 2023

Justice Rajan Gupta  
Chairman  
Haryana Real Estate Appellate Tribunal  
Chandigarh

Inderjeet Mehta  
Member (Judicial)

Anil Kumar Gupta  
Member (Technical)

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