BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1105 of 2022**
First date of hearing:		**25.07.2022**
Date of decision	**:**	**01.12.2022**

Smt. Kusum Lata Rohilla
R/O : H. No. 240/1, Ward No.13,
Mohalla Lal Khania, Jhajjar, Haryana **Complainant**

Versus

M/s Prime Time Infradevelopers Private Limited
Office: 10th Floor, Tower-D, Global Business Park,
MG Road, Gurugram-122002. **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**
Shri Sanjeev Kumar Arora **Member**

APPEARANCE:
Sh. Ramesh Rohilla **AR of the complainant**
Ms. Namitha Mathews **Counsel for the respondent**

ORDER

1. The present complaint dated 29.03.2022 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 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*.

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:

S. N.	Particulars	Details
1.	Name and location of the project	"Habitat" at sector 99A, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	5.96 acres
4.	DTCP license no.	21 of 2014 dated 11.06.2014 valid upto 10.01.2020
5.	Name of licensee	M/s Prime Infra Developers Private Limited
6.	RERA Registered/ not registered	Registered vide no. 27 of 2017 dated 28.07.2017 valid upto 22.01.2021
7.	Unit no.	302, 3rd floor, Tower-C (Page no. 23 of BBA in complaint)
8.	Unit area admeasuring	448 sq. ft. (Carpet area) 36 sq. ft. (Balcony area) (Page no. 23 of BBA in complaint)
9.	Date of allotment	10.09.2015 (Page no. 69 of complaint)
10.	Date of builder buyer agreement	23.05.2016 (Page no. 22 of complaint)
11.	Environmental clearance dated	22.01.2016 [As per letter dated 03.02.2016 on page 18 of complaint]
12.	Possession clause	***8. POSSESSION*** ***8.1*** *: That the Company shall, under normal conditions, subject to force majeure circumstances,* ***complete the construction of the said Project in which the said Apartment is to be located within 4 (four) years from approval of building plans or grant of environmental clearances whichever is later****, as per the said sanctioned plans and specifications seen and accepted by the Allottee with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area, nomenclature, etc. as may be undertaken by the Company as .....*

		Emphasis supplied
13.	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016]
14.	Total sale consideration	Rs. 18,10,000/- (approx.) [as per schedule of payment page 49 of complaint]
15.	Amount paid by the complainant	Rs. 11,86,205/- [Page 11 of reply]
16.	Offer of possession	16.12.2019 [page 56 of complaint]
17.	Cancellation letter dated	31.03.2021 [page 58 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

I. That the complainant booked a flat in the project habitat under the Affordable Housing Scheme in 2014 by making initial booking amount of Rs. 90,007/- by cheque no. 298717 dated 30.10.2014 in the name of respondent with application no. 5806.

II. That respondent issued a letter on 03.08.2015 inviting the complainant to attend the lots of draw on 12.08.2015 in respect of the project and accordingly the respondent hold a draw of lots of project and complainant was allotted flat no. C-302 in the said project in sector- 99 A, Gurugram.

III. That on 16.02.2016 the complainant deposited Rs. 3,75,850/- vide cheque no. 239140 of Oriental Bank of Commerce, Jhajjar against the demand letter of the respondent dated 03.02.2016. The respondent and complainant signed the builder buyer agreement on 23.05.2016 which included all the terms and conditions regarding the questioned unit in the project. The complainant deposited Rs. 2,26,250/- and Rs. 4,79,650/- vide cheques bearing nos. 340492 & 015068 in the name of respondent against the demand letters dated 01.08.2016 & 03.08.2017.

IV. That on dated 01.09.2019 the respondent issued a demand letter for the Rs. 7,33,050/- to the complainant for making payment of balance installments of the unit but the complainant could not make the payment due to some family circumstances and illness of her husband.

V. That on dated 16.12.2019, the respondent issued a letter for offers of possession for unit along with the demand of Rs. 9,27,395/- including interest to the complainant. On 21.03.2021, the respondent issued a letter to the complainant regarding cancellation of unit due to non-payment of outstanding dues of Rs. 7,55,885/- against the said unit. The respondent also mentioned to refund the payment after applicable deduction against the said unit. That on 29.06.2021, the complainant made a request to the respondent for the refund of the balance amount paid for unit after making applicable deductions. On 01.07.2021, the complainant again made a request to the respondent to make applicable deductions as per clause 5 of builder buyer agreement with the head "Mode of Payment".

VI. That on 07.07.2021, the respondent sent a letter to the complainant to collect the balance payment of Rs. 9,51,306/- after making the following deductions :

	Particular	Amount
Less	Total Amount Received	11,86,205/-
Less	Deduction as per Haryana affordable housing policy	1,15,500/-
Less	Service Tax & user Charges	33,715/-
	GST due till 31.03.2020	85,684/-
	Balance Refundable	9,51,306/-

The respondent also attached a Haryana Govt. Town and Country Planning department notification dated 05.07.2019 in the support of making illegal deduction of Rs 90,500/-. It is pertinent to mention here that it is clearly mentioned in the notification that "The policy notification shall come into

the affect from the date of this notification". That the complainant also objected the deduction of Rs. 16,229/- as service charges and Rs. 17,424/- as user charges. Whereas the complainant did not use anything so far against the unit. That the complainant also objected the deduction of GST for Rs. 85,684/- which was against the rule.

VII. That on 22.07.2021 the complainant made a request to the respondent refund the balance amount of Rs. 9,51,306/- as prepared by the respondent after the illegal deductions in response to the mail of the respondent dated 21.07.2021. That on 03.08.2021 the respondent issued a cheque of Rs. 9,51,306/- after a receiving the original documents i.e. builder buyer agreement, original receipts of payments made to the respondent by the complainant against the unit.

VIII. That the complainant made a request to the respondent on 04.08.2021 regarding refund of wrong deductions in the cancelled unit. In this letter the complainant explained all the details regarding wrong deductions.

IX. That the respondent on 05.09.2021 in response to the letter of the complainant dated 04.08.2021 has become ready to refund of Rs. 17,424/- as user charges in the illegal deductions against the cancelled unit.

X. That the complainant has made a request to the respondent several times to refund the illegal deductions made in the cancelled unit of Rs. 90,500/- and Rs. 68,584/- as GST as the applicable rate of GST in case of affordable housing policy is 1% as per cost of the unit i.e. on 18,10,000/-. The GST amounts counts to the Rs. 18,100/- only whereas the respondent as deducted Rs. 85,684/-. The respondent has also charged Rs. 17,424/- as service charges and user charges. It is pertinent to mention here that the GST including the service tax. Whereas the respondent has charges services tax separately which is illegal ? The complainant also did not take the possession of the said flat, the meter connection, usages and other

charges are not applicable to the complainant. These charges receivable from the person who will purchase this flat hence the charges against the user charges are illegal and refundable. In the light of this respondent it is ready to refund the amount of Rs. 17,424/- charge as user charges in the said unit. The balance amount of Rs. 1,74,375/- is still pending which is charged illegally by the respondent and refundable under law. The respondent have not refunded the said amount to the complainant and compelled the complainant to approach this authority to seek redressal of grievances.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

   i. **Direct the respondent to refund of Rs. 1,74,375/- illegally charged by the respondent in the name of unnecessary deductibles.**

   ii. **Litigation expenses of Rs. 70,000/-.**

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. That the complainant, desirous of booking a flat in the said project, applied for an allotment in the said Project and consequently paid a sum of Rs. 90,007/- towards the same. The respondent, vide letter dated 03.08.2015 duly informed and invited the complainant to attend the draw of lots for the units in the said project on 12.08.2015. Upon the conduct of the draw of lots in terms of the said policy on 12.08.2015, the complainant emerged as a successful allottee and was allotted unit no. C-302 admeasuring 448 sq. ft of carpet area in the said project.

7. That the respondent, in terms of the said policy and the allotment of the said unit in favor of the complainant, issued a letter dated 03.02.2016 to the

complainant calling upon the complainant to pay a sum of Rs. 3,75,850/- as liable to be paid by the complainant in terms of the policy/payment plan 'within 15 days from the date of issuance of demand letter' i.e., on or before 18.02.2016. In terms of the aforementioned letter dated 03.02.2016, the complainant paid the sum of Rs. 3,75,850/- vide cheque no. 239140 dated 16.02.2016. It is stated that in terms of the allotment of the unit to the complainant, the parties entered into buyer's agreement dated 23.05.2016.

8. The respondent thereafter issued a demand letter dated 01.08.2016 to the complainant calling upon the complainant to pay a sum of Rs. 2,26,250/- as liable to be paid by the complainant in terms of the policy/payment plan 'within 6 months from allotment' i.e., on or before 18.08.2016. In pursuance of the said demand letter, the complainant paid the aforementioned sum of Rs. 2,26,250/- vide cheque no. 340492 dated 16.08.2016. The respondent in terms of schedule of payments of the said agreement issued the demand letter dated 03.08.2017 for payment of Rs. 4,79,650/-, however, the complainant only on 30.12.2017, after a delay of 4 months cleared the aforesaid outstanding amount. Thereafter the respondent in terms of the schedule of payments issued another demand letter dated 01.09.2019 to the complainant for payment of Rs. 7,33,050/-, however, the complainant again committed a default by not making the payment as per the aforesaid demand letter.

9. That the respondent thereafter issued the final call letter dated 16.12.2019 to the complainant calling upon the complainant to clear the outstanding dues and take possession of the said unit on or before 21.01.2020. It is pertinent to state that at the time of the issuance of the final call letter dated 16.12.2019, the complainant had a previous outstanding amounting to Rs. 7,33,050/- excluding interest on such outstanding payment. It is stated that the complainant, to take possession of the said Unit was liable to clear a total

outstanding payment of Rs. 9,27,395/- including the previous outstanding of the complainant.

10. As per the terms of clause 8 of the said agreement, the respondent was liable to complete the construction of the said project in which the said Unit is located within 4 (Four) years from the approval of building plans or grant of environmental clearances, whichever is later. It is stated that admittedly, even though the respondent had completed the construction of the said complex within the time period stipulated under the said agreement, the complainant, despite the issuance of the final call letter dated 16.12.2019, failed to come forth and clear her outstanding dues and take possession of the said unit.

11. It is stated that on account of the failure of the complainant to clear her outstanding dues and take possession of the said unit in terms of the final call letter dated 16.12.2019, the respondent was constrained to issue a reminder letter dated 02.03.2020 calling upon the complainant to clear her outstanding dues and take possession of the said unit. Despite the issuance of the final call letter dated 16.12.2019 and the reminder letter dated 02.03.2020, the complainant failed to come forth and clear her outstanding dues and take possession of the said unit, owing to which the respondent was once again constrained to issue a final notice dated 15.10.2020 calling upon the complainant to take possession of the said unit, upon clearance of her outstanding dues.

12. In view of the continued failure of the complainant to clear her outstanding dues and take possession of the said unit, despite the final call letter having been issued way back on 16.12.2019 and several reminders issued thereafter, the respondent was constrained to cancel the allotment of the complainant in the said unit vide cancellation letter dated 31.03.2021. It is pertinent to state that the respondent vide the said cancellation letter also

informed the complainant that the respondent would duly refund the monies payable to the complainant after applicable deductions. It is pertinent to mention that in Affordable Housing Projects, punctual and timely payment of installments is necessitated, however, the complainant continuously delayed in clearing the outstanding payments on which delay interest as per RERA rates was accrued, however, the respondent out of goodwill, did not deduct the said interest while cancelling the unit.

13. Upon receipt of the said cancellation letter dated 31.03.2021, the complainant, while acknowledging the cancellation of the allotment of the complainant in the said unit, issued a letter dated 29.06.2021 calling upon the Respondent to provide the exact amount which would be deducted and the net amount that would be refunded to the complainant. Vide the said letter dated 29.06.2021, the complainant also requested the respondent to inform the complainant of a suitable date and time for collecting the cheque for the refund of money due to the complainant and returning documents concerning the said unit.

14. That the complainant, again, issued letter dated 01.07.2021, stating that as per clause 4.5 of the said agreement, in case of cancellation of allotment, the earnest money of Rs. 25,000/- shall be forfeited. In response to the letter dated 01.07.2021 received from the complainant, the respondent vide email dated 06.07.2021 duly provided a detailed breakup of the deductions liable to be made under the said policy and the subsequent amendment, being the notification dated 05.07.2019.

15. The complainant, thereafter, addressed another letter dated 07.07.2021, inter alia, alleging that the applicable deduction on the said unit in terms of the said policy and the said agreement was limited to Rs. 25,000/-, whereas the respondent had deducted a sum of Rs. 90,500/- in terms of the notification dated 05.07.2019 issued by the Department of Town and

Country Planning, Govt. of Haryana, which notification was allegedly not applicable to the said unit since the said notification was allegedly applicable only from 05.07.2019. The respondent, upon receipt of the said letter dated 07.07.2021, addressed an email dated 21.07.2021 duly clarifying the baseless allegations and alleged issues raised by the complainant and duly informed the complainant that the deductions by the respondent had been made in terms of clause 5 of the said agreement and the notification dated 05.07.2019. It is stated that the respondent, in terms of the said policy along with the said amendment made the following deductions:

Particular	Amount
Total Amount Received	11,86,205/-
Less: Deduction as per the Haryana Affordable Housing Policy and the Amendment dated 09.07.2019	1,15,500/-
Less: Service Tax & User Charges	33,715/-
Less: GST Due till 31.03.2020	85,684/-
Balance Refundable (approx.)	9,51,306/-

It is stated that a perusal of the above would establish that the respondent has acted in complete consonance with the said policy and the said amendment, thereunder. The respondent had also, admittedly, as a gesture of goodwill, offered a refund of Rs. 17,424/- deducted by the respondent towards the user charges.

16. In response to the said email dated 21.07.2021, the complainant addressed another letter dated 22.07.2021, duly requesting the respondent to refund the amount of Rs. 9,51,306/- to the Complainant at the earliest.

17. It is stated that upon the receipt of the letter dated 22.07.2021 from the complainant, the respondent duly prepared the cheque for a refund of Rs. 9,51,306/- after making applicable deductions in terms of the said policy and the said notification dated 05.07.2019 and the complainant on 03.08.2021

duly accepted the said refund. It is pertinent to state that while accepting the cheque for the refund of Rs 9,51,306/- the complainant also signed an acknowledgement dated 03.08.2021 wherein the complainant has accepted the payment of Rs. 9,51,306/- paid by the respondent as full and final payment and in furtherance, to this, the complainant had given an undertaking to not make any claims against the respondent. Therefore, the complainant, at such a belated stage, after accepting the refund of Rs. 9,51,307/- as full and final payment of her dues concerning the said unit and having given up all the rights and claims against the respondent, cannot proceed to evade its undertaking given in the said acknowledgment and address such letters against the respondent. It is stated that the complainant has conveniently failed to bring to the attention of this Hon'ble Authority that the complainant has already accepted a sum of Rs. 9,51,307/- from the respondent on 03.08.2021 as full and final payment of her dues. It is stated that once the complainant has duly accepted the said refund of Rs. 9,51,307/- as full and final payment and has even proceeded to execute the acknowledgment letter dated 03.08.2021 clearly stating that the complainant has no further claims with respect to the said unit, the complainant, now cannot proceed to renege from her own undertaking. It is stated that the deductions by the respondent were made in terms of the said amendment and compliance with the applicable law.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

19. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for

all purposes. 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

20. 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.*

21. 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.

22. 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."*** **2021-2022(1)RCR(C), 357** and followed in case of ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021*** 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."

23. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to refund of Rs. 1,74,375/- illegally charged by the respondent in the name of unnecessary deductibles.

24. The complainant was allotted a unit through draw of lots by making initial booking amount of Rs. 90,007/- by cheque in the project of the respondent. The respondent issued an allotment letter dated 10.09.2015 for unit C-302 in its project detailed above under the affordable housing policy, 2013. On 23.05.2016 a builder buyer agreement was executed between the parties in respect of said unit. The complainant started making payments against the allotted unit as per the schedule of payments and paid a sum of Rs. 11,86,205/- in all against the total sale price of Rs. 18,10,000/- to the respondent. As per the buyers' agreement, the allotted unit was to be handed

over to her on 22.01.2020. On 16.12.2019, the respondent issued a letter of offer of possession for said unit along with demand of Rs. 9,27,395/- to the complainant. However, that demand could not be fulfilled due to some personal reasons of the complainant. Though after that a reminder dated 16.12.2019 for payment of the due amount was received vide annexure 8 but the same was followed by letter of cancellation of the allotted unit vide annexure P9 dated 31.03.2021. So, ultimately vide annexure 10dated 29.06.2021 followed by reminder dated 01.07.2021(annexure 10 & 11), the complainant made a request for refund of paid-up amount after statutory deductions but was issued an account payee cheque for RS. 9,51,306/-. However, while cancelling a unit the respondent illegally deducted Rs. 90,500 and 68,584/- as GST besides Rs. 17,424/- as service and user charges illegally. So, the complainant is seeking refund of that amount illegally retained by the respondent along with interest at the prescribed rates.

25. But the case of respondent is that though the complainant was its allottee in the above-mentioned project and deposited different amount against that unit but committed default in making payments as per schedule of payment. So, after giving her an opportunity, the allotted unit was cancelled and the balance amount of Rs.9,51,306/- after statutory deduction was refunded to her. It was denied that the deduction was made illegally from the paid-up amount and the same were not as per the affordable housing policy, 2013.

26. It is an admitted fact that the complainant paid a sum of RS. 11,86,205/- in all against the allotted unit and failed to pay the remaining amount as per the policy of 2013, leading to cancellation of the allotment and refund her the above-mentioned amount. That amount was accepted by her and acknowledged on 03.08.2021 vide annexure R4. Now, the only dispute between the parties is w.r.t deduction made from the paid-up amount. While refunding a sum of RS. 9,51,306/-, the respondent deducted Rs. 1,15,500/-,

Rs. 33,715 & Rs. 85,684/- as per the policy of 2013, service tax user charges and GST respectively. But the policy of 2013 under clause 5(i) provides a provision for cancellation of allotted unit and which runs as follow:

> *"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 colonizer 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."*

27. Now, the question which arises for consideration is as to whether deduction made vide cancellation letter dated 31.03.2021 are as per the policy of 2013. As per the letter dated 31.03.2021 while cancelling the allotment, the respondent deducted Rs. 1,76,508/- and sent the remaining amount received from her through an account payee cheque dated 27.02.2021 and the same was acknowledged by her vide annexure R4. Though, it is pleaded on behalf of the respondent that the deduction of the amount was made as per the policy of 2013, but the plea advanced in this regard is not tenable. Clause 5(iii)(h) of the Affordable Housing Policy, 2013 amended on 05.07.2019 is relevant in this regard and the same is reproduced 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: -*

Sr. No.	*Particulars*	*Amount to be forfeited*
(aa)	*In case of surrender of flat before commencement of project*	*Nil;*

(bb)	*Up to 1 year from the date of commencement of the project:*	*1% of the cost of flat;*
(cc)	*Up to 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;*

28. The authority observes that surrendering of flat by the allottee and cancellation of flat by the promoter are two different concepts under the policy of 2013. In the present case, the respondent has deducted the amount of the complainant as per clause 5(iii)(h) but the said clause 5(iii)(h) is applicable in case of surrender of flat by allottee. There is a distinction between the two i.e., surrender of flat and cancellation of flat. In case of cancellation of flat clause 5(iii)(i) of the affordable housing policy will be followed and clause 5(iii)(i) has not been amended so far. So, in view of the aforesaid policy of 2013, the respondent could not have deducted more than Rs. 25,000/- as against Rs. 1,15,500/-. Secondly, the respondent while cancelling the allotted unit also deducted Rs. 33,715/- and Rs. 85,684/- being service tax, user charges and GST respectively. The complainant was allotted the unit under the affordable housing policy 2013 for a sum of Rs. 18,10,000/- in all it is not the case of the respondent that the amount deducted under the above-mentioned heads to the tune of Rs. 85,978/- was payable by her due to change of the policy of the Govt.

29. The complainant is seeking the payment of undue deductions made by the respondent which are not as per Affordable Housing Policy as only a deduction of Rs.25,000/- shall be made in case of cancellation and that no surrender of the unit was made while deductions have been made as applicable in case of surrender. Besides the GST and service tax are being deducted which are beyond the rates prescribed for such taxes as only 1%

GST is applicable in case of affordable housing project and hence unjustified deductions be also refunded to the allottee.

30. As far as liability w.r.t tax is concerned, the respondent has taken a plea that the service tax was charged for a period of 18.08.2016 to 18.02.2017 i.e., till the date of imposition of GST. Further, GST @ 18% is charged from the builder in consonance of prevailing tax rates, as the amendment wherein the on-going project of affordable group housing policy will be charged @ 1% came into existence in 2019. It is observed by the authority, that the respondent-builder is right in charging tax as per the prevailing law of the land. However, the said rates were revised vide amendment dated 01.04.2019 subject to availability of input tax credit. There is no doubt that the respondent is right in charging tax as per prevailing law of land but it pass on the benefit of ITC to the allottee as per prevailing law. In this context the attention of the parties is drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

> *"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

31. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said

provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.

32. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future.

33. Upon perusal of documents and submitted by both the parties, the authority is in view that the respondent has not completed the project till date and issued various demands/reminder letter to the complainant to clear outstanding dues and the same was not cleared by her which ultimately led to cancellation of unit. It is an admitted fact that the complainant paid a sum of Rs. 11,86,205/- in all against the allotted unit and failed to pay the remaining amount as per the policy of 2013, leading to cancellation of the allotment and refund her the above-mentioned amount after deducting 25,000/- as per policy 2013. The policy of 2013 under clause 5(iii))(i) provides a provision for cancellation of allotted unit and which runs as follow:

> *"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 newspaper 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".

34. The respondent was under obligation to deduct the amount as per clause 5(iii)(i) of Policy, 2013 and duly return the balance amount. However, the respondent instead of deducting Rs. 25,000/- as specified under clause 5(iii)(i) of Policy, deducted amount over and above the said limit. Therefore, the authority is of considered view that the said money over and above Rs.25,000/- 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 Rs. 25,000/- as specified under clause 5(iii)(i) of Policy, along with interest @ 10.35% per annum from the date of cancellation of the unit i.e. 31.03.2021 till the actual realization of the amount.

F. Directions of the authority

35. 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 is hereby directed to refund the excess amount deducted by it over and above of Rs. 25,000/- as specified under clause 5(iii)(i) of Policy, along with interest @ 10.35% per annum from the date of cancellation of the unit i.e., 31.03.2021 till the actual realization of the 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.

36. Complaint stands disposed of.

37. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.12.2022