

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

Complaint no. : 3986 of 2021
First date of hearing: 24.11.2021
Date of decision : 25.04.2023

Nirmala

R/O: - V/o Rohtash 766 Hakikat Ki Shop, DT-223,
Ward no. 20, Palwal, Haryana - 121102

Complainant

Versus

M/s GLS Infratech Pvt. Ltd.,
Regd. Office - 707, 7th Floor, JMD Pacific Square,
Sector - 15, Part - II, Gurugram - 122001,
Haryana

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Mr. Gaurav Bhardwaj
Mr. Sandeep Chaudhary

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 06.10.2021 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.

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. No.	Heads	Information
1.	Name and location of the project	"GLS Infratech- Arawali Homes", Sector-4, Gurugram
2.	Project area	10 acres
3.	Nature of the project	Affordable group housing
4.	DTCP license no. and validity status	110 of 2014 dated 14.08.2014 valid upto 11.04.2020
5.	Name of the Licensee	GLS Infratech Pvt. Ltd. and anr.
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 232 of 2017 dated 19.09.2017 Valid upto 13.09.2019 further extended to 12.04.2020
7.	Unit no.	T9-805, Tower - T009 (Page 23 of complaint)
8.	Unit admeasuring	467 sq. ft. (Page 23 of complaint)

9.	Date of flat buyer's agreement	25.09.2019 (Page 22 of complaint)
10.	Payment plan	Time linked payment plan (Page 52 of complaint)
11.	Total consideration	Rs. 19,61,204/- (Page 30 of the complaint) Rs. 21,63,937/- (Page 62 of complaint - total cost with tax)
12.	Total amount paid by the complainant	Rs. 7,31,104/- (Page 62 of the complaint)
13.	Possession clause	5.1 <i>The developer proposes to offer the handing over the physical possession of the flat to the purchaser within a period of 48 months from the commencement date.</i> Read with clause 1.10 wherein it defines the commencement date, it shall mean the later of the date of approval of building plans or date of obtaining the environment clearance for the AGH colony which is later (Emphasis supplied)
14.	Date of approval of building plans	01.10.2014 (Page 23 of complaint)
15.	Date of obtaining the environment clearance	12.04.2016 (Page 15 of reply)
16.	Due date of delivery of possession	12.04.2020

		(Calculated from the date of EC)
17.	Occupation certificate	Obtained as on 22.05.2020 (Page 29 of reply)
18.	Offer of possession	29.06.2020 (Page 63 of the complaint)
19.	Demand cum cancellation letter	22.02.2021 (Page 65 of complaint)

Facts of the complaint

- That somewhere around 2016- 2018, the respondent advertised about its new group housing project namely "Arawali Homes" (*hereinafter called as 'the project'*) located in Sector-4, District Shona. The complainant booked an apartment in the said project of the respondent by submitting an application form and paying an amount of Rs.86,560/- dated 18-01-2019, towards booking of said unit. That, after almost 10 months from the date of booking, finally, on 25.09.2019, the apartment buyer agreement was executed between the parties. Till date the complainant has paid a total sum of Rs. 7,31,104/- towards the unit in question, as and when demanded by the respondent, as against a total sale consideration of Rs. 19,61,204/-.
- That when she came to know that earlier the price of same unit was way lesser then the amount which she was paying. Then she asked the respondent to resolve this issue to which the respondent never gave a reasonable satisfactory response.
- That she has never defaulted to make timely payments raised against the said unit is now left with no other option other than to hold the payments.

That as per clause 5 sub clause 5.1.1 of the agreement dated 25.09.2019, the respondent had undertaken to complete the project and handover possession of the unit within a period of 48 months from the date of commencement. That the due date for offer of possession as per the agreement was **12.04.2020** but the respondent failed to handover the said unit on the due date.

6. She was offered possession of the unit vide letter of offer of possession dated **29.06.2020**, with specific instruction in regard to the final payment as per **Annexure-1** of the said letter, annexed with the said letter within 30 days from the date of letter. The net due payment amounted to a sum of Rs.14,37,495/-. That she was shocked to see that rather than subtracting the amount of Rs. 3,04,209/- from the total sale consideration. The respondent has charged them with other unjustified charges on account of labour cess, EMC, offer of possession, legal charges.
7. Again, when she reached out to the respondent with the letter for offer of possession and asked them not to charge anything out of the agreement, the respondent being on a dominating position refused to entertain any request of her and threatened her to pay the due amount within 30 days otherwise it will cancel the booking. Thereafter, she was served a notice for payment of outstanding dues dated 22.02.2021 whereas the said unit stood cancelled due to non-performance of obligations by her.

- B. That the respondent has wrongfully assessed the earnest money and deducted a huge amount of money as earnest money from the amount already paid by the complainant. That the present complaint has been filed in order to seek possession of the said unit along with delay possession charges.

C. Relief Sought

9. This Authority may direct the respondent as follows:

- i. Direct the respondent to recall cancellation letter dated 22.02.2021 and handover the actual physical possession of the apartment along with delay possession charges.
- ii. Direct the respondent to not to charge anything outside the clauses mentioned in the agreement.
- iii. Direct the respondent to not charge, levy any holding charges and labour cess from the complainant.

D. Reply by the respondent

10. That the complaint under reply is neither tenable nor maintainable and the complainant does not have any cause of action to peruse the present complaint. Even by virtue of the complaint it is an admitted fact that the offer of possession has been made to the complainant on 29.06.2020 which is alleged by her to have been made on 12.04.2020 but she did not make the due payments and as on 29.06.2020 an amount of Rs. 14,37,495/- had been due and payable and the unit was cancelled vide notice dated 22.02.2021 when the complainant failed to pay the dues in a timely manner and till date

no offer of payment of the due principal along with due interest has been made by her.

11. That it is submitted that the respondent has been duly constructing the project named as Arawali Homes at Sector-4, Sohna, Gurugram, However, the complainant has been highly irregular in payments of the due instalments as per the agreed terms and conditions and despite of repeated reminders and though the project is complete the complainant instead of paying the requisite due charges on offer of possession along with outstanding interest for late payments has ventured into filing the present frivolous complaint for dishonest gains against which the respondent is well within its rights to charge holding charges and interest on outstanding payments. Thereby the respondent has been duly abiding by its obligations of construction of the project as per the agreement between the parties and the Haryana Affordable Housing Policy 2013.
12. That though the complainant has admitted that she defaulted in the due payments, however, the complainant is trying to hide behind false and frivolous allegations and though the complainant is seeking possession along with delay possession charges but at no point has she ever stated that she was ready to make the due payments and that she is still ready to make the payments demanded from her along with interest outstanding for delay in payments.
13. That the complainant is not entitled to any of the reliefs claimed in the present complaint nor does the Hon'ble Authority has any jurisdiction to

grant any such reliefs. That it is further stated that the respondent despite difficult circumstances of National Lockdown in wake of prevention of COVID 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 1 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, however, the complainant despite the obligations being executory on the part of the respondent, the complainant is illegally trying to evade the payments and arm-twisting the respondent 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. Such a conduct of the complainant is highly condemnable and the complaint of the complainant may therefore, be dismissed with very high costs.

14. Copies of all the relevant documents have been duly filed and placed on the 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

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

15. 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.

16. 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 refund the amount received from the complainant along with interest at prescribed rate.

17. The complainant was allotted unit no T9-805, Tower - T009 in project "Arawali Homes" by the respondent builder for a total consideration of Rs. **21,63,937/-** under the payment schedule given on page 52 of the complaint. After that BBA was executed on 25.09.2019, the respondent builder continued to receive the payments against the allotted unit. It has brought on record that the complainant had deposited several amounts against the allotted unit and paid a sum of Rs. 7,31,104/-. The OC has been received of the project on 22.05.2020 and the unit was offered on 29.06.2020. It is to be noted that on account non-payment the unit was cancelled vide letter dated 22.02.2021.

18. The counsel for the complainant stated that they have moved an application for seeking possession. However, since the project is not yet complete and now wish to amend their relief and wish to seek refund. The counsel for the respondent states that they have already filed copy of OC received on 22.05.2020 and offer of possession was also made on 29.06.2020 copy of which has been filed by the complainant himself along with the complaint and

further states that complainant was well aware of the cancellation done by the respondent on account of non-payment after due reminders and copies of reminders have been placed on record by the counsel for the complainant and due procedure of publication for cancellation was very well followed by the respondent. The counsel for the complainant further stated that even if unit of the allottee has been cancelled by the respondent, they should refund the amount as per provisions of Affordable Housing Policy. However, counsel for the respondent further stated that respondent had sent a letter on 22.02.2021 in which it was clearly mentioned that after forfeiting earnest money, an amount of Rs. 4,79,953/- is ready for refund as full and final settlement. Lastly it was stated by complainant that the said amount is not acceptable to them, hence a complaint has been filed before this authority and now wish to amend the relief from possession to refund.

19. On perusal of the letter, it was noted that after cancellation of the allotted unit, the respondent builder returned the remaining paid-up amount to the complainant after deducting earnest money through cheque (the copy of which is not on record) which is Rs. 4,79,953/-. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25,000/- only and the balance amount shall be refunded back to the complainant. In the present case, the respondent has deducted an amount of Rs. 2,51,151/- out of the total amount paid of 7,31,104/- and refunded Rs. 4,79,953/- to the complainant.

But clause 5(i) of the Affordable Group Housing Policy, 2013 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 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".

20. The cancellation was upheld as the proper demand notices have been sent and publication has also been done in the newspaper (as per page 66 of the complaint). But the deduction made by the respondent while cancelling the allotted unit is not as per the policy of 2013. Accordingly, the respondent is directed to deduct only Rs. 25,000/- and refund the balance amount of within a period of 90 days along with interest on the balance amount from the date of cancellation till its actual payment.

G. Directions of the authority

21. 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 amount after deducting a sum of Rs. 25,000/- along with interest at the rate 10.70%

on the balance amount from the date of cancellation i.e., 22.02.2021 till its actual realization.

(ii.) The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.

22. Complaint stands disposed of.

23. File be consigned to registry.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.04.2023

HARERA
GURUGRAM