

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.28 of 2023

Date of Decision: 17.08.2023

M/s GLS Infratech Private Limited, 707, 7th Floor, JMD Pacific Square, Sector 15, Part II, Gurugram, through its AR Shri Pankaj Sharma.

Appellant

Versus

1. Mr. Syed Md Lutfullah
2. Mr. Syed Fahad Ahmed

Both Residents of Magadh Mahila Centre, near Japanai House, Aliganj, Gaya, Bihar-823001.

Respondents (Complainants)

3. M/s Dewan Housing Finance Corporation Limited, now known as Piramal Capital & Housing Finance Limited (Piramal Finance), at its branch office at 3rd Floor, Enkay Tower, Udyog Vihar, Phase 05, Gurgaon, Haryana.

Proforma Respondent

CORAM:

Justice Rajan Gupta
Shri Anil Kumar Gupta,

Chairman
Member (Technical)

Argued by: Mr. Gaurav Jaglan, Advocate
for the appellant.

Mr. Sahil Goel, Advocate
for respondents no.1 & 2.

Appeal No. 28 of 2023

ORDER:

Anil Kumar Gupta, Member (Technical)

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 09.08.2022, passed by learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), whereby complaint No.3791/2020, filed by complainant-allottees (respondents no.1 and 2 herein) was disposed of with the following directions: -

- "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."*

2. As per the averments in the complaint, the respondent/allottees 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 allottees. A buyer's agreement (hereinafter called 'the agreement') was executed between the parties on 31.12.2016 for a total sale total sale consideration

Appeal No. 28 of 2023

of Rs.17,31,200/-. It was pleaded that allottee no.1 being disabled and retired, was unable to pay the entire amount himself, took a loan from Dewan Housing Finance Corporation Limited (for short 'DHFC'), as it was on the panel of the appellant-promoter. A tripartite agreement was executed on 09.01.2017 between the appellant, respondent-allottees and DHFC for a loan amount of Rs.13,00,000/-. The Respondent allottees allege that the DHFC coerced the complainants into taking insurance along with the loan. After the initial payment, the promoter demanded further payments but the DHFC did not make any payment. Thus, it breached its responsibility to pay to the promoter. The allottees intimated the delay in payment by the DHFC to the promoter and requested for not charging delay interest vide email dated 22.10.2016, which was accepted by the promoter.

3. It was further pleaded that the DHFC gave a foreclosure letter dated 21.08.2019 and obtained a refund of Rs.4,26,770/- from the appellant-promoter. The DHFC had only paid an amount of Rs.3,46,240/- to the promoter. The remaining amount of Rs.91,723/- was paid by the promoter to DHFL Pramerica Life Insurance and Chola MS General Insurance, a sister concern company of DHFC, as an insurance for the allotment. This is prima facie connivance between the promoter and the DHFC. Thus, it was pleaded

Appeal No. 28 of 2023

that extra amount of Rs.80,530/- which belongs to the allottees was wrongfully disbursed to the DHFC/its sister company. The respondent/allottees have been paying the Pre-EMI to the DHFC since 20.01.2017 till 30.09.2019. The respondent/allottee have paid an amount of approximately Rs.1,00,000/- to DHFC as Pre-EMI. As DHFC, who had gone bankrupt, was not paying installments, the respondent/allottees fearing cancelation paid a further amount of Rs.1,60,000/- and thereafter another amount of Rs.27,557/- to the appellant promoter.

4. With these pleadings, the respondent/allottees sought the following relief in the complaint:-

- “a) To direct the respondents to refund the entire amount of Rs.2,74,117/- paid by the complainants plus amount of Rs.3,46,240/- paid by DHFC 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.

5. The complaint was resisted by the appellant-promoter on technical grounds. It was pleaded that there is no deficiency in service. It was further pleaded that though tripartite agreement was executed between the parties on

Appeal No. 28 of 2023

09.01.2017, but the primary responsibility to pay the instalments was due against the respondent/allottees. The allottees paid some amount against the allotted unit, but failed to pay the further amount demanded from time to time despite issuance of reminders and ultimately the allotment of the unit was cancelled. After cancellation of the unit, the amount due to the DHFC was paid and the remaining amount is to be paid by the allottees to it.

6. It was pleaded that besides Rs.25,000/-, the promoter is entitled to deduct statutory charges as per the policy of 2013 and therefore, the allottees are neither entitled to any refund of the paid-up amount nor the authority had jurisdiction to deal with the complaint.

7. Controverting all the pleas raised by the allottees, the appellant/promoter sought dismissal of the complaint being without any merits.

8. Learned Authority after considering the pleadings of the parties and the documents placed on the record, passed the impugned order dated 09.08.2022, the relevant part of which has already been reproduced in the opening para of this order.

9. We have heard learned counsel for the parties and have carefully gone through the record.

Appeal No. 28 of 2023

10. At the outset, learned counsel for the appellant contended that the respondent/allottees have paid an amount of Rs.5,92,800/- plus Rs.27,557/-, whereas as per the payment plan, the respondent/allottees had to pay a total amount of sale consideration within 36 months of the allotment letter i.e. up to 07.10.2019. Due to non-timely payments by the allottees, the appellant/promoter cancelled the allotment of the allottees on 11.09.2019 after due notices and publication in the newspaper. The flat in question was under mortgage with the financier and the appellant in order to clear its property sought the amount of foreclosure charges from DHFC. The financial institution DHFC stated a foreclosure charge of Rs.4,26,770/-. Consequently, the appellant made a payment of Rs.4,26,770/- to the respondent/financier DHFC, thereby releasing the flat from any encumbrances.

11. It was further contended that on review of the complete accounts, the cancellation charges and net recoverable from the allottees is as under:-

a) Basic cancellation charges	Rs.25,000/-
b) GST on the cancellation charges	Rs.4500/-
c) 5% of the flat cost:	Rs.86,157/-
d) GST on 5% flat cost:	Rs.15,508.26

Appeal No. 28 of 2023

e) GST nonrefundable:	Rs.43,280/-
f) Interest accrued till cancellation:	Rs.2,09,563/-
g) Tax @ 8% on the interest accrued:	Rs.14,860/-
Total amount of deduction:	Rs.3,98,868.26
Total paid by the allottees (respondents no.1 & 2):	Rs.5,92,800/-
Paid to respondent no.2	Rs.4,26,770/-
Net recoverable from the respondent no.1	Rs.2,32,838.58

12. He submitted that the appellant is well within its right to claim 5% of the flat cost, Goods and Service Tax (GST) on the surrender of the unit and additional charges at the rate of 18% as GST on Rs.25,000/-. The appellant is also entitled to levy interest on outstanding payments.

13. With these averments, it was contended that the present appeal may be allowed and the appellant be held entitled to recover the amount of Rs.2,32,838/- more from the respondent/allottees and the impugned order be modified accordingly.

14. Per contra, learned counsel for the respondent/allottees argued that the deductions as allowed by the Authority are in accordance with the Affordable Housing Policy, 2013 launched by the Government of Haryana, under which the allotment was made to the allottees. He asserted that the impugned order is just and fair and there is no merit

Appeal No. 28 of 2023

in the appeal filed by the appellant and the same be dismissed.

15. We have duly considered the contentions of both the parties.

16. Undisputedly, the respondent/allottees were allotted flat no.102, Tower no.5, in the affordable housing project namely "Arawali Homes Project" Sector-4, Sohna, District Gurugram, vide allotment letter dated 07.10.2016. The agreement between the parties was executed on 31.12.2016. As per the Haryana Affordable Housing Policy, 2013, the appellant/promoter was to offer possession of the said unit within a period of four years from the date of approval of the building plans or grant of environmental clearance, whichever is later. Building Plans were got approved on 01.10.2014, the date of environmental clearance is 12.04.2016. Therefore, due date of possession calculated from the date of environmental clearance plus six months grace period comes out to 12.10.2020 and there is no dispute about this. The Occupation Certificate has been obtained by the appellant on 22.05.2020. A tripartite agreement between the appellant, respondent/allottees and DHFC was executed for a loan amount of Rs.13,00,000/-. The Respondent/allottees have paid an amount of Rs.86,560/ as booking amount on 30.06.2016 thereafter another sum of

Appeal No. 28 of 2023

1,60,000/- and Rs.27,557/- on 24.12.2018 and 31.03.2019 respectively to the appellant promoter. The allottees could not pay the demand raised by the appellant/promoter, therefore, the appellant cancelled the allotment of the unit on 11.09.2019.

17. As per the appellant, the appellant after cancellation of the unit paid an amount of Rs.4,26,770/- to the respondent financier DHFC and therefore a net amount of Rs.2,32,838.58 is recoverable from the allottees as per following details:

a) Basic cancellation charges	Rs.25,000/-
b) GST on the cancellation charges	Rs.4500/-
c) 5% of the flat cost:	Rs.86,157/-
d) GST on 5% flat cost:	Rs.15,508.26
e) GST non-refundable:	Rs.43,280/-
f) Interest accrued till cancellation:	Rs.2,09,563/-
g) Tax @ 8% on the interest accrued:	Rs.14,860/-
Total amount of deduction:	Rs.3,98,868.26
Total paid by the allottees (respondents no.1 & 2):	Rs.5,92,800/-
Paid to respondent no.2	Rs.4,26,770/-
Net recoverable from the respondent no.1	Rs.2,32,838.58

18. During the course of arguments, the counsel for the appellant pleaded that the appellant is entitled to deduct Rs.25,000/- in addition to 5% of the flat cost (Rs.86,157/-) as

Appeal No. 28 of 2023

per the Affordable Housing Policy of 2013 (amended in 2019) of Government of Haryana. However, perusal of the reply of the appellant in the complaint reveals that there is no specific plea with respect to deduction of 5% of flat cost. Besides, there is no counter claim by the appellant before the Authority seeking such relief. The appellant being respondent before the Authority cannot seek such relief in the appeal in absence of any counter claim filed by it before the Authority below. Therefore, the appellant is not entitled to the relief of Rs.86,157/- as 5% of the flat cost. As the appellant is not entitled to the relief of Rs. 86,157/-, the claim for Rs.15,508/-, which represents the GST on the Rs. 86,157/-, is also not sustainable. Furthermore, we are unable to understand about the applicability of above said GST of Rs 15,508/- and Rs. 4,500/- as mentioned at Sr. no. (b) in the above table on the amount being deducted by the appellant from the total amount paid by the allottees. Paragraph (xviii) of the appellant's reply to the complaint is reproduced below to demonstrate that appellant did not mention the relief of Rs. 86,157/-, which is 5% of the flat cost, in their initial response:

“(xviii) That the contents of sub para (xviii) as stated are all wrong and denied. It is stated that apart from the amount of Rs.25,000/- the answering respondent is also entitled to the deduction of the taxes, interest on delayed

Appeal No. 28 of 2023

payments processing fee and other charges as per Policy, 2013 and the RERA rules. That the allegation that the conduct of the respondent is violative of Section 11(5) of the Real Estate (Regulation and Development) Act, 2016 is wrong and denied specifically.”

In addition to the above, we are unable to understand as to how the GST of Rs.43,280/- claimed as “GST non refundable’ is being claimed. The appellant has not provided any evidence that the said GST of Rs.43,280/- has been paid by the appellant on account of the respondent/allottees and it had suffered such loss for the reasons attributable to the allottees. Also, the appellant has not presented any cogent reason explanation or rationale regarding the basis for charging Rs.2,09,563/- under the label of 'interest accrued till cancellation.' There remains a lack of clarity regarding the specific sum or time frame upon which this interest was imposed, as well as the rationale for the levy of taxes at the rate of 8%, resulting in liability of Rs.14,860/- on the allottee. The amount of Rs. 4,26,770/- that the appellant paid to DHFC has already been allowed by the authority in the impugned order, and there is no dispute regarding it in the current appeal. Consequently, we choose not to address this matter. In view of our aforesaid findings, it is held that the respondent/allottees are entitled for the refund of the amount along with the prescribed rate of interest

Appeal No. 28 of 2023

i.e. SBI highest MCLR plus 2% (10.75%) per annum as per the order of the Authority.

19. No other point was argued before us.

20. In view of our aforesaid findings, the present appeal filed by the appellant/promoter has no merit and is hereby dismissed with aforesaid clarification.

21. No order as to costs.

22. The amount deposited by the appellant/promoter i.e. Rs.2,24,584/- with this Tribunal in view of proviso to Section 43(5) of the Act, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondent/ allottees subject to tax liability, if any, as per law.

23. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

24. File be consigned to the record.

Announced:
August 17, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)