

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

Complaint no. :	4184 of 2022
Date of filing complaint:	10.06.2022
First date of hearing:	14.09.2022
Date of decision :	16.08.2023

Anchal Jain R/O: - 146, Lane no. 9, Tunner Road, Bharuwala Grant, Clement Town, Dehradun, Uttarakhand - 248002	Complainant
Versus	
M/s GLS Infratech Private Limited Regd Office at : 707, 7th floor, JMD Pacific Square, Sector - 15, Part - II, Gurugram, Haryana - 122001	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
None	Complainant
Sh. Himanshu Sharma Proxy Counsel	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottee 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. No.	Heads	Information
1.	Name and location of the project	"GLS Infratech- Arawali Homes", Sector-4, Gurugram
2.	Project area	13.39 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 up to 13.09.2019 further extended to 12.04.2020

7.	Unit no.	T3-1302, Tower - 003, 13 th floor (Page 16 of complaint)
8.	Unit admeasuring	467.80 sq. ft. (Page 16 of complaint)
9.	Date of allotment	08.08.2019 (Page 16 of complaint)
9.	Date of flat buyer's agreement	09.08.2019 (Page 23 of complaint)
10.	Payment plan	Time linked payment plan (Page 56 of complaint)
11.	Total consideration	Rs. 20,29,472/- (Page 10 of the complaint)
12.	Total amount paid by the complainant	Rs. 86,560/- (Page 10 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 /commencement of construction of project	11.04.2016 (As per DTCP website)
15.	Date of obtaining the environment clearance	12.04.2016 (Page 9 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 8 of reply)
18.	Offer of possession	Not offered
19.	Reminder letters	05.09.2019, 21.09.2019, 07.10.2019, 1.12.2019 (From pages 11-19) Newspaper advertisement (Page 21 of the reply)
20.	Notice for payment cum cancellation letter	22.02.2021 (Page 22 of reply)

B. Facts of the complaint:

3. That, officials of the respondent showed the brochure of the aforementioned project and further advised the complainant to buy a flat in the subvention scheme. She specifically told the respondent that she has a bad CIBIL score and might not get the loan, but the respondent

assured her that she will get the loan sanctioned for her as they have good relations with many banks failing which they will refund the earnest money without any deduction.

4. That on 15.05.2019, she paid an amount of Rs. 86,500/- as the earnest money. Vide agreement dated 09.08.2019, she booked a residential unit for a total sum of Rs. 20,29,472/- that in the month of August - September 2019, both the parties were entered into a tripartite agreement with PNB bank for providing the loan to her but the same was rejected on the grounds of bad CIBIL score.
5. Vide a mail dated 25.05.2020 she requested the respondent to cancel the booking of unit citing certain medical issues and financial crisis due to COVID-19. It is pertinent to mention here that it has assured her to refund the earnest money without any deduction in case it fails to get the loan sanction.
6. That between 02.06.2020 to 10.06.2020, shw wrote 3 follow up mails to the respondent regarding the cancellation of the unit but to no avail as the respondent didn't reply to any of the mail. That on 04.04.2021, she wrote another mail to the respondent seeking cancellation of the subject unit. That on 05.04.2021, the respondent finally responds to her mail but in a very arbitrary and cryptic manner denied refunding the booking amount of Rs. 86,560/-, paid by her to the respondent. That having no other alternative, she issued a legal notice dated 12.04.2021 to the

respondent through her counsel seeking the cancellation of the above-mentioned unit and refund of the earnest money.

C. Relief sought by the complainant:

7. The complainant has sought following relief(s):
 - i. Direct the respondent refund a sum of Rs. 86,560/- to the complainant along with 12% interest from date of cancellation i.e., 25.05.2020 till date of realization.
 - ii. Direct the respondent to pay legal cost incurred by the complainant to the tune of Rs. 1,00,000/-
8. On the date of hearing, the authority explained to the respondent/promoter 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 respondent

9. The respondent contested the complaint vide their reply dated 20.12.2022 respectively on following grounds:-
10. That the complainant has absolutely no cause of action to file the present complaint as she only paid the initial booking amount of Rs. 86,560/- on 15.05.2019 when the project was already in advance stage of construction and thereafter failed to pay any amount to the respondent and then herself surrendered the unit on 04.04.2021 and when the respondent informed about the charges applicable including cancellation charges, interest on outstanding payments already

accrued, 5% of the flat cost and the applicable GST thereon vide email dated 05.04.2021, the complainant filed the present complaint which is nothing but an abuse of the process of law.

11. The complaint under reply is neither tenable nor maintainable and the complainant does not have any cause of action to pursue the present complaint due to her own acts and conduct in firstly not making any payment after the initial instalment of Rs. 86,500/- on 15.05.2019 and then not accepting the applicable cancelation charges, outstanding interest and taxes.
12. That it is stated that the respondent company has been duly engaged in the development of the affordable housing project in the name of "Arawali Homes" at sector - 4, Sohna Gurgaon and has duly abided by all its obligations and the development of the said project is already complete and delivered despite the difficult circumstances of COVID-19 etc.
13. That the complainant is estopped from raising any false claims against respondent because of her own acts of non-payment of due amounts of sale consideration and deliberately avoiding the repeated reminders and letters from the respondent including letters dated 05.09.2019, 07.10.2019 and 01.12.2019 upon which complainant was put in the defaulter list and final opportunity was allowed vide newspaper advertisement dated 14.01.2021 and thereupon finding no response or

payment on behalf of complainant, respondent was constrained to cancel the allotment and process the refund of the remaining amount after deduction of the dues amounts as per the Affordable Housing Policy and thereupon vide notice dated 22.02.2021 complainant was duly informed of the cancellation of the allotment and about the further outstanding amount of Rs. 1,88,563/- being due and payable by complainant despite cancellation on account of interest outstanding and cancellation charges, however, complainant still did not come forward to make the said payment and has instead got filed the above noted complaint.

14. It is denied that the subject matter of the claim falls within the jurisdiction of the authority. It is denied that there was any kind of assurance for loan or payment of EMI's on behalf of respondent or any of their officials. It is stated that complainant cannot be said to be acting in good faith when she is searching for a house for herself without having any source of payment and merely trying to gain wrongfully at the cost of the bank or the developer.
15. Copies of all the relevant documents 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 submission made by the parties.

E. Jurisdiction of the authority:

16. The respondent has raised an objection regarding jurisdiction of the authority to entertain the present complaint and the said objection stands rejected. 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

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

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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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.I Direct to the respondent to refund an amount of Rs. 86,560/- along with interest.

17. The complainant booked a unit in the affordable group housing project of respondent "GLS Infratech- Arawali Homes", in Sector 3, Sohna, Gurugram and was allotted a unit bearing no. 807 Tower - 2 vide allotment letter dated 08.08.2019 for a total sale consideration Rs.20,29,472/- and she has paid a sum of Rs. 86,560/- against the said consideration. A buyer agreement was executed on 09.08.2019. The possession of the unit was to be offered within 4 years from the date of approval of building plans (cannot be ascertained) or from the date of environment clearance(12.04.2016) , whichever is later. Therefore, the due date of possession comes out to be 12.04.2020. The respondent vide reminder/demand letters dated 05.09.2019, 21.09.2019, 07.10.2019, 01.12.2019 intimated the complainant for payment of outstanding dues but she failed to adhere the same.
18. Further, vide proceeding dated 10.05.2023, the counsel for the complainant stated that a request for surrender/ cancellation was

made by her on 25.03.2020 through email on account of illness of the complainant's father. Request was followed by reminders but the respondent did not pay heed and cancelled the unit on 22.02.2021.

19. The proxy counsel for the respondent stated at bar that the cancellation has been made according to the Affordable Housing Policy as per which an amount of Rs.25,000/- was to be deducted along with 5% of the basic sale price. On the contrary, the counsel for the complainant stated at bar that even if some deductions are required to be made from the refundable amount, it should be made from the date of withdrawal/surrender and not from the date of cancellation which occurred after 2 years of the said withdrawal/surrender request.
20. As per section 5 sub section (iii) clause (h) of Affordable Housing Policy 2013 -:

A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottee are not able to remove the deficiencies in their application within the prescribed period of 15 days. [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	1% of the cost of

✓

	<i>project</i>	<i>flat</i>
<i>(cc)</i>	<i>Up to 2 year 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>

21. The situation in the present complaint lies in the clause (dd) of the above-mentioned table as the request of surrender was made on 25.03.2020 i.e., after 2 years from the date of commencement of the project which is 11.04.2016.
22. Keeping in view the aforesaid factual, legal provisions and arguments put before the bench while deciding the merits of the case. The authority came to a conclusion, the respondent can deduct 5 % of the cost of flat which will be around Rs. 1,01,473/- in addition to Rs. 25,000/-. However, the amount paid by the complainant i.e., Rs. 86,560/-. Thus, no direction to this effect can be given.

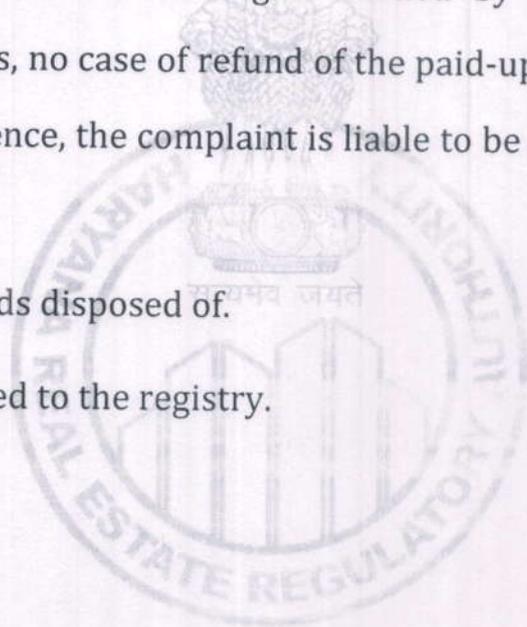
F. II Direct the respondent to cost of litigation and compensation for mental agony.

23. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of

compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority:

24. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
25. Complaint stands disposed of.
26. File be consigned to the registry.



HARERA

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023

Ashok Sangwan
Member