

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

Complaint no.	2945 of 2022
Date of filing complaint	15.09.2022
Date of decision:	15.11.2023

Veerpal Singh <b>Address:</b> - House No. 213, Ram Pura, Shikohpur, Narsinghpur, Gurugram - 122004.	<b>Complainant</b>
Versus	
GLS Infra projects Private Limited <b>Corporate office at</b> 311, 3 <sup>rd</sup> Floor, JMD Pacific Square, Sector 15, Part II, Gurugram - 122 001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Pankaj Yadav proxy counsel	Complainant
Shri Harshit Sharma proxy counsel	Respondent

**ORDER**

1. The present complaint 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 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 allottees 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Avenue 51", Sector 92, Gurugram.
2.	Project Area	6.3125 acres
3.	Natura of project	Affordable colony
4.	DTCP License No. and validity status	110 of 214 dated 14.08.2014 valid upto 11.04.2020. 24 of 2019 dated 08.03.2019 valid upto 07.03.2024
5.	Name of Licensee	GLS Infratech Pvt. Ltd.
6.	RERA Registration No.	233 of 2017 dated 19.09.2017
7.	Allotment letter	08.08.2017
8.	Unit no.	H-605, 6 <sup>th</sup> floor, tower- H
9.	Super area	640 sq. ft.
10.	Date of execution BBA	Not executed
11.	Possession clause as per Affordable Housing Policy, 2013	<b>1 (iv)</b> All such projects shall be required to be necessarily completed within <b>4 years</b>

		<b>from the date of approval of building plans or grant of environmental clearance</b> , whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
12.	Date of Environment clearance	21.07.2017
13.	Date of approval of Building Plan	20.03.2017
14.	Due date of possession	31.01.2022 [calculated as 4 years from date of environmental clearance i.e., 21.07.2017 as the same is later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
15.	Basic sale consideration as per BBA on page 45 of complaint.	₹ 25,87,500/-
16.	Total amount paid by the complainant	₹ 35,44,886/- (as per customer ledger)
17.	Occupation certificate on	15.03.2021
18.	Offer of possession	Not offered
19.	Reminder's letter	03.10.2018, 21.09.2019
20.	Surrender letter send by the complainant	October/November 2019

**B. Facts of the complaint:**

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

- i. That the complainant was in the need of a residential flat for his own residential purposes. In the months of February-March 2017 agents and representatives of the respondent approached the complainant and assured that the respondent is the builder of repute, they are bringing a project known as Avenue 51 at Sector 92, Village Wazirpur, Gurugram (herein after referred as "the project") and will deliver the project duly completed in all respect within the agreed time frame.
- ii. That believing the assurances so given by the said agents and representatives to be true and correct, the complainant paid a sum of Rs.1,29,375/- on 22.04.2017 towards the booking amount and booked a residential flat bearing Unit No. H-605, 3BHK, 6<sup>th</sup> Floor, Tower H, Avenue 51, Sector 92, village Wazirpur, Gurugram under "Affordable Housing Policy 2013" issued by the government of Haryana, vide Town and Country Planning Department's notification dated 19<sup>th</sup> August, 2013 at the total sale consideration of Rs. 25,87,500/-.
- iii. That as demands made by the respondent the complainant have further paid a sum of Rs. 5,95,126/- on 04.10.2017 vide receipt. In response thereof the respondent issued an allotment letter dated 08.08.2017 and thereby allotted an apartment bearing H-605, located at 6<sup>th</sup> Floor in Tower H in the said project total measuring 640 sq. Feet (carpet area) along with balcony and a two-wheeler parking area measuring 0.8m \* 2.5m.

- iv. That it was the abandoned duty of the respondent to execute the apartment buyer agreement at the time of receiving the booking amount for the apartment i.e. on or before 22.04.2017. Surprisingly and to the shocking of the complainant, the respondent failed to execute the apartment buyer agreement at the time of receiving the booking amount or even at the time of issuing of the allotment letter dated 08.08.2017. It is pertinent to mention here that the respondent have mentioned certain terms and conditions in the application for booking of the apartment but in the said allotment letter the respondent had stated that the terms and conditions mentioned in the application and/or the allotment letter are only broad and indicative in nature. The respondent further wrongly and unlawfully mentioned in the said allotment letter that the detailed and conclusive terms and conditions for allotment and sale of the apartment shall be provided in the apartment buyer's agreement and to the extent of any conflict or inconsistency the terms and conditions as mentioned in the apartment buyer's agreement shall prevail.
- v. That it is submitted that the respondent has got no right to force the complainant to get execute the application for allotment on the terms and conditions which have not been agreed at the time of filling in the said application or at the time of payment of the booking amount i.e. a sum of Rs. 1,29,375/-. Hence the terms and condition as stated in the application form or in the allotment letter are not binding on the complainant. That thereafter, in accordance with the demand raised by the respondent dated

01.02.2018, the complainant paid a sum of Rs. 3,49,314/- on 25.05.2018.

- vi. That instead of executing the apartment buyer's agreement at the time of accepting booking, the respondent after having been received three instalments total of a sum of Rs. 10,73,815/- i.e. more than 41.5% of the total sale consideration, the respondent sent a pre-printed apartment buyer's agreement (ABA) to the complainant.
- vii. That upon going through the said ABA the complainant found that the said pre-printed agreement contained unfair, biased terms and conditions favouring the respondent which were even not agreed upon at the time of booking of the said residential unit. Those terms were not in accordance with the assurances and promises so made by the agents, representatives and executives of the respondent. Those terms were not only against the interests as well as just rights of the complainant but also discriminating too, at the hands of the respondent.
- viii. That upon receipt the said biased ABA the complainant visited the office of the respondent and raised his concerns and requested for the required changes in accordance with the promises and assurances so given by the agents, representatives and executives of the respondent and understanding between the parties but the customer executive stated to the complainant that to change the terms of the said pre-printed ABA is not the policy of the respondent company and threatened the complainant either to execute the said ABA or else the respondent company will deduct the earnest money. From the discussion above, it is clear that the

- respondent had indulged in and had adopted all restrictive and unfair trade practices.
- ix. That though the complainant felt humiliated and cheated but to save the unwarranted, unlawful deduction of the said earnest money, the complainant with no other option but to execute and enter into the said biased ABA and thus the complainant entered into the said ABA.
- x. That it is pertinent to mention here that the complainant applied and got the housing loan from ICICI bank against the said apartment and a tripartite agreement was also duly executed between the bank and the parties herein. The respondent also issued a letter dated 25.04.2018 to the ICICI bank regarding the permission/consent to mortgage the said flat/apartment.
- xi. That as per the demand dated 14.07.2018, so raised by the respondent, the complainant made payment of another amount of a sum of Rs. 3,49,314/- on 04.10.2018 and thus the complainant made payment of four instalment total of a sum of Rs. 14,23,129/- i.e. more than 55% of the total sale consideration.
- xii. That the respondent sent reminder letter dated 03.10.2018, and 21.09.2019, i.e. to the complainant and finding no other option, the complainant in the month of October/November 2019 surrendered back the said flat/apartment to the respondent and requested the respondent to refund the money so paid by him as the terms and conditions of the ABA were biased, one-sided, favouring to the respondent and were discriminating to the complainant. It is further submitted that as the terms and conditions of the ABA were biased and the respondent is indulged

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into restrictive and unfair trade practices, the respondent has got no right or entitlement to deduct any amount paid by the complainant on account of the earnest money deposit.

- xiii. That it is pertinent to mention here that the complainant visited the office of the respondent time and again to get the terms and conditions amended in consonance with the promised so made by the agents, representatives of the respondent; which have been made by them before and during the time of booking of the residential flat/apartment but all went in vain as the officials of the respondent not only have refused to do so but have threatened either take as it is or they will deduct the earnest money deposit and other charges.
- xiv. That immediately after the surrender of the said flat/apartment back to the respondent, the respondent has got no right, title or interest to keep the hard earn money of the complainant with them. But to the utter surprise and shocking of the complainant the respondent has adopted the restrictive and unfair trade practices and failed to refund anything to the complainant till the filing of the present complaint and is unlawfully enjoying the same.
- xv. That in such facts and circumstances, the complainant left with no other option but to seek the indulgence of this Authority and this Authority had competent jurisdiction to entertain, try and decide the present complaint.

**C. Relief sought by the complainant:**

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



- i. Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.
- ii. Direct the direct the respondents to pay the complainant a sum of Rs. 1,00,000/- towards the litigation expenses for this complaint.

**D. Reply by respondent:**

5. The respondent by way of written reply made following submissions:

- i. That 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 his own acts and conduct in firstly not maintaining the financial discipline of making timely payments and then not accepting the applicable cancellation charges, outstanding interest and taxes and not even informing in whose favour was the draft for refund for the bank's loan part was to be made.
- ii. That it is stated that the respondent company has been duly engaged in the development of the Affordable Housing Project in the name of "GLS Avenue 51" at Sector 92 Gurugram and has duly abided by all its obligations and the development of the said project is already complete. The details of the requisite permissions and sanction are as under: Environment Clearance: SEIAA/HR/2017/484 dated 21.07.2017 Sanction of building plans: ZP-1139/SD(BS)/2017/5350 dated 20.03.2017 1V HRERA registration: 233 od 2017 Occupation certificate: ZP-1139/SD(DK)/2021/6662 dated 15.03.2021.
- iii. That it is an admitted fact that the complainant had been allotted the Unit No. H-605, 3BHK, 6" Floor, Tower H, in project named

Avenue 51, at Sector 92, Village Wazirpur, Gurugram vide allotment letter dated 8.08.2017 and the complainant was sent the Apartment Buyer's Agreement but the complainant did not sign the same. The complainant in paid two instalments amounting to Rs. 7,24,501/- against the said unit by himself and an amount of Rs. 6,98,628/- was paid by the complainant by availing a housing loan from ICICI Bank by mortgaging the said Unit. Thereby in all an amount of Rs. 14,23,129/- was paid against the said Unit till 14.10.2018 and thereafter the complainant did not paid any amounts despite repeated reminders and finally the complainant surrendered the said Unit on 26.03.2022 by sharing the foreclosure letter however, when the respondent vide email dated 2.04.2022 asked for name in whose favour the draft for payment is to be made for the Bank portion, the complainant did not reply and instead the complainant thereafter illegally filed the present complaint.

- iv. The respondent is still ready to make the due refund as per the latest foreclosure letter of the Bank on getting to know in whose favour the bank draft needs to be made upon deducting the charges as under: Sr. No. 2. 3. 4. 5 Particulars Cancellation Charges Tax Charges of 5% of total cost since the cancellation was sought when the project is complete. 18% GST on 5% cancellation charges Late payment charges Total Amount Rs. 25,000/-Rs. 4,500/-Rs. 1,29,375/- Rs. 23,287/-Rs. 59,200/-Rs. 3,96,616.50/- That the respondent has neither caused any breach of the bilateral obligations with the complainant nor caused any violation of the provisions of the Real Estate(Development and

Regulation) Act, 2017 and hence the complaint is not tenable.

That the complaint is not filed as per the prescribed format and hence the same is liable to be dismissed at the very threshold.

6. 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 those undisputed documents.

**E. Jurisdiction of the authority:**

7. 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**

8. 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**

9. 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 complainants at a later stage.

10. 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. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."*

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

**F. Findings regarding relief sought by the complainant.**

**F.I Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.**

12. The complainant is an allottee in the project "Avenue 51", an Affordable Housing Colony developed by the respondent. Vide letter dated 08.08.2017, the complainant was allotted unit bearing No. H-605, 6<sup>th</sup> floor, tower- H. There has been no BBA executed between the parties, as pleaded by the allottee the agreement was against the affordable housing policy. The complainant did not clarify in the pleading as to which clause of the builder-buyer agreement was one-sided and arbitrary. The complainant paid a total sum of Rs. 35,44,886/- out of sale consideration of Rs. 25,87,500/-. The allottee sent a surrender letter to the respondent in October/November 2019 for refund the entire amount paid by him.

13. It is pertinent to mention Clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by notification dated 05.07.2019 which states as under:

*"In clause no. 5 (Allotment Rates; Allotment & Eligibility Criteria), of the Annexure A of notification dated 19th August 2013: -  
a. 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: -

<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>

14. Since the surrender of the unit by the complainant was done in 2019, hence the respondent is entitled to forfeit amounts in accordance with amended section 5(iii)(h). The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environment clearances, whichever is later. In the instant case, the date of environment clearances, i.e., 21.07.2017 is later and hence, the same would be considered as date of commencement of project.
15. The complainant, in this case, surrender the unit in 2019 i.e., after 2 years from the date of commencement of project. Hence, the respondent is directed to forfeit 5% of the flat cost in addition to Rs. 25,000/- as amended by the policy of 2013. The respondent is entitled to forfeit 5% of the Rs. 25,87,500/- i.e., Rs. 1,29,375/- in addition to Rs.



25,000/- . Thus, the respondent is entitled to forfeit only Rs. 1,54,375/- and return the rest of the amount to the complainant along with interest at the rate of 10.25% [the state Bank of India highest marginal cost of leading rate (MCLR) applicable as on date +2%] as prescribed under rule 15 of the Haryana Real estate (Regulation and Development)Rule, 2017 from the date of surrender i.e., October/November 2019 till the date of realization within the timelines provided in Rule 16 of the Haryana Rules 2017(ibid).

16. Therefore, the Authority is of considered view that the said money over and above as specified above as specified above 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 deduction 5% of the flat cost in addition to Rs. 25,000/- as specified under clause 5(iii)(h) of Policy, along with interest 10.755 per annum from the date of surrender of the unit i.e., October/November 2019 till the actual realization of the amount.

**F.II Direct the direct the respondents to pay the complainant a sum of Rs. 1,00,000/- towards the litigation expenses for this complaint.**

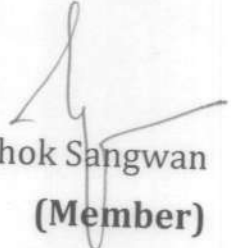
17. The complainant is claiming compensation under the present relief. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming 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. Therefore, the complainant is at liberty to approach the adjudicating officer for seeking compensation, if any.

**G. Directions of the Authority:**

18. 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) of the Act of 2016:
  - i. The respondent is directed to refund the excess amount deducted by it over and above of deduction 5% of the flat cost in addition to Rs. 25,000/- as specified under clause 5(iii)(h) of Policy, along with interest 10.75% per annum from the date of surrender of the unit i.e., October/November 2019 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.
19. The Complaint stands disposed of.
20. File be consigned to registry.

  
Ashok Sangwan  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.11.2023