

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal Nos.542 & 620 of 2022

Date of Decision: 25.09.2023

Appeal N.542 of 2022

Sangita Lakhara, Dayal Hardware, Shop No.20, Sector 44,
Kanahigao, Gurugram, Haryana.

Appellant

Versus

1. Pyramid Infratech Private Limited
2. Dinesh Kumar
3. Brahm Dutt

Regd. Office: Unit No.501-508, Fifth Floor, Unitech Trade
Centre, Sector 43, Gurugram.

Respondents

Appeal No.620 of 2022

Pyramid Infratech Private Limited, Regd. Office at H-38,
Ground Floor, M2K White House, Sector-57, Gurugram

Corporate Office at 217A-217B, 2nd Floor, Suncity Business
Tower, Sector 54, Gurugram.

Appellant

Versus

Sangita Lakhara, Dayal Hardware, Shop No.20, Sector 44,
Kanahigaon, Gurugram, Haryana-122002.

Respondent

CORAM:

Justice Rajan Gupta	Chairman
Shri Anil Kumar Gupta,	Member (Technical)

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Argued by: Ms. Nirmla, Advocate,
for the allottee (appellant in appeal
no.542/2022 and respondent in appeal
no.620/2022).

Ms. Mehar Nagpal, Advocate
for promoter (respondents in appeal
no.542/2022 and appellant in appeal
no.620/2022).

ORDER:**ANIL KUMAR GUPTA, MEMBER (TECHNICAL)**

This order shall dispose of both the appeals mentioned above which have arisen out of the same order dated 26.11.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the 'Authority') whereby complaint No.1829 of 2021, filed by the allottee (appellant in appeal no.542/2022 and respondent in appeal no.620/2022), was disposed of with the following directions:-

"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 respondents are directed to refund the balance amount of Rs.2,95,680/- to the complainant after deduction of Rs.25000/- from the amount of Rs.3,20,680/- failing which legal consequences would follow."*

2. As both the parties have filed appeal against the same order, so in order to avoid confusion with respect to the

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identity of the parties, Sangita Lakhara-complainant (appellant in appeal no.542/2022 and respondent in appeal no.620/2022) shall be referred to as 'allottee' and Pyramid Infratech Private Limited and others (respondents in appeal no.542/2022 and appellant in appeal no.620/2022) shall be referred to as 'promoter'.

3. As per the averments in the complaint, the allottee had applied for an apartment/flat measuring 591.19 sq. ft. and balcony area of 100 sq. ft. in the project being developed by the promoter in Sector "Urban 67A, Gurugram" under Affordable Housing Policy of Government of Haryana vide notification dated 19.08.2013. The total sale consideration of the unit/flat was Rs.29,28,620/-. In a draw of lots held on 15.03.2018, the allottee remained successful for allotment of flat. The allotment of unit no.806 in the above said project was made to the allottee vide allotment letter dated 17.03.2018. An 'Apartment Buyer's Agreement' (hereinafter referred to as 'the agreement') was executed between the parties on 20.04.2018. The allottee made payment of Rs.19,55,944/- to the promoter through different cheques on different dates. The remaining amount was to be paid in instalments. The allottee could not make the payment of instalment in the month of September, 2020 because of

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lockdown in the Country due to corona virus. For the said payment of instalments, the allottee repeatedly requested the promoter to pay the defaulted instalments alongwith interest for the delayed period by going to the office of the promoter. The promoter consented for the said payment. However, when the allottee went to the office of the promoter, it refused to accept the same and informed the allottee that the flat allotted to her had been cancelled and an amount of Rs.16,35,264/- had been credited to her account. She pleaded that a sum of Rs.3,20,680/- had been illegally deducted by the promoter with an intention of causing financial loss to her.

4. With these pleadings, the allottee filed the complaint seeking following relief:-

- i) Direct the promoter to pay interest for every month of delay at prevailing rate of interest.
- ii) Direct the promoter that the cancellation of flat is violation of RERA.
- iii) Direct the promoter not to deduct the amount of Rs.3,20,680/-.

5. The complaint was resisted by the promoter on the ground that the complaint is not maintainable because the allottee is defaulter in payment of instalments and the allotment has been cancelled in accordance with the agreement and as per the 'Affordable Housing Policy'. It was pleaded that as per clause 2.3 of the agreement, an amount of

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Rs.25,000/- plus tax would be treated as earnest money and same is liable to be forfeited in the event of surrender of allotment by the allottee and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer, including non-payment of instalments. The demand raised by the promoter was legal and the allottee has no valid ground to challenge the same. The allottee despite having received the demand letters and reminders etc. failed to remit the instalments on time. It was pleaded that as per Affordable Housing Policy, notified on 19.08.2013 and amended on 05.07.2019, the deduction of the said amount of Rs.3,20,680/- has been made. The allottee is defaulter in payment of instalments despite demand letter dated 24.08.2020, reminder dated 17.09.2020, publication of notice in the daily Hindi newspaper 'Rastriya Sahara' dated 08.10.2020 and final reminder dated 09.10.2020. All this shows that the promoter has complied with all the provisions of the policy and cancelled the unit of the allottee with adequate notice.

6. While controverting all the pleas taken in the complaint, the promoter pleaded for dismissal of the complaint, being without any merit.

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7. The Authority after considering the pleadings of the parties, passed the impugned order dated 26.11.2021, which has already been reproduced in the opening para of this order.

8. We have heard learned counsel for the parties and have carefully gone through the record of the case.

9. At the outset, learned counsel for the allottee contended that the allottee had been continuously making the payment of instalments on the due date on issuance of demand/tax invoice according to the promoter's payment plan and has made a total payment of Rs.19,55,944/-. The instalment in the month of September, 2020 could not be paid because of lockdown in the Country due to corona virus. For this half yearly instalment (September, 2020), the allottee repeatedly requested to pay two half yearly instalments with interest by personally going to the office of the promoter. The promoter consented for the above said request of the allottee. However, on 28.02.2021 when the allottee went to the office of the promoter for payment of half yearly instalment of September, 2020, the promoter refused to accept the same and informed that the plot allotted to her had been cancelled and the amount will be refunded in her bank account. The promoter refunded an amount of Rs.16,35,264/- against the

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total deposited amount of Rs.19,55,944/-. She asserted that a sum of Rs.3,20,680/- has been illegally and improperly deducted by the promoter.

10. With the aforesaid contentions, the allottee prayed for re-allotment of the same flat and setting aside the impugned order.

11. Per contra, learned counsel for the promoter contended that it is the admitted fact that the allottee defaulted in making certain payments as stipulated in the agreement. The promoter sent multiple demand reminders to the allottee. The promoter then published a defaulters' list of allottees in the Daily Hindi newspaper 'Rastriya Sahara' dated 08.10.2020. The name of the allottee was also mentioned in the list of defaulters in the above said publication. She asserted that despite several reminders, no payment has been received from the allottee, which constrained the promoter to cancel the allotment vide cancellation letter dated 27.10.2020. After cancellation, the promoter proceeded to refund an amount of Rs.16,35,264/- on 01.03.2021. In reply to the complaint, the promoter had categorically provided the following chart indicating the components comprised in total amount deducted by it:-

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Description	Charges
Surrender charges	Rs.25,000/-
After 2 years from the date of commencement of the project: 5% of the cost of flat.	Rs.1,20,738/-
18% GST on cancellation	Rs.26,233/-
GST paid (already deposited to department)	Rs.1,44,886/-
Interest on delay payment as on 27 th October, 2020	Rs.3,824/-
Total deduction	Rs.3,20,680/-
Amount paid	Rs.19,55,944/-
Refunded amount	Rs.16,35,264/-

12. She asserted that the terms of the agreement provides that an amount of Rs.25,000/- plus taxes shall be treated as earnest money. The earnest money includes not only an amount of Rs.25,000/-, but also includes taxes. The promoter has deducted earnest money and taxes thereon as per clause 2 of the agreement.

13. She further asserted that the total amount paid by the allottee was towards the sale consideration and tax. Goods and Service Tax (GST) being statutory levy, has to be deposited with the government and is not to be retained by the promoter and therefore, the direction of the Authority in holding that only an amount of Rs.25,000/- can be deducted and not GST, is illegal and is liable to be set aside.

14. She further submitted that as per clause 10.3 of the agreement, the promoter is entitled to cancel the allotment of

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the unit and after such cancellation; the promoter is to refund the amount by forfeiting the booking amount paid for the allotment plus 5% of the cost of flat which is Rs.1,20,738/- plus GST and interest component on the delayed payment. The rate of interest shall be @ SBI highest MCLR plus 2%.

15. With the aforesaid pleadings, she prayed for allowing the appeal filed by the promoter and setting aside the impugned order.

16. We have duly considered the aforesaid contentions of both the parties.

17. Admittedly, the allottee approached the promoter for allotment of a flat in multi storey residential project of the promoter. The allottee was successful in draw of lots held on 15.03.2018 and was provisionally allotted an apartment bearing no.806 Type 2 BHK, Tower-06 on 8th floor, measuring 691.19 sq. ft. (carpet area of the unit 591.19 sq. ft. and super area 691.19 sq. ft.). The total sale consideration was Rs.29,28,620/- as per the allotment letter dated 17.03.2018 issued under Affordable Housing Policy of Govt. of Haryana. Subsequently, the agreement between the parties for the said unit was executed on 20.04.2018. The allottee had made a total payment of Rs.19,55,944/-. The allottee could not make payment for the instalment in the month of September, 2020.

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Consequently, the promoter gave notice to the allottee for making the payment. The promoter then published defaulters' list of allottees in the daily Hindi newspaper 'Rastriya Sahara' on 08.10.2020. The promoter proceeded to cancel the allotment on 27.10.2020 and refunded an amount of Rs.16,35,264/- on 01.03.2021 after deducting Rs.3,20,680/- from the amount paid by the allottee .

18. The primary issue before us is the validity of the cancellation of allotment of the unit. To address the issue we refer to clause 5(iii)(i) of the Affordable Housing Policy, 2013, which reads as below:-

Clause 5(iii)(i)

"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, filing 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".

19. The promoter raised a demand of Rs. 3,26,007/- through a letter dated August 24, 2020, which was payable by September 15, 2020. Following this, a reminder letter was

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issued on September 17, 2020. Subsequently, on October 8, 2020, the promoter published a notice for payment in the daily Hindi newspaper 'Rastriya Sahara,' and on October 27, 2020, a cancellation letter was issued. It is evident from the above sequence of events that the promoter adhered to the prescribed procedure outlined in clause 5 (iii)(i) of the 2013 policy, justifying the cancellation of the allottee's unit due to non-payment of dues. There is no legal infirmity in the impugned order regarding the unit cancellation; thus, the authority's decision on this matter is upheld.

20. The promoter after cancellation of the unit has deducted an amount of Rs.3,20,680/- from the total amount of Rs.19,55,944/- paid by the allottee as per the below mentioned table:

Description	Charges
Surrender charges	Rs.25,000/-
After 2 years from the date of commencement of the project: 5% of the cost of flat.	Rs.1,20,738/-
18% GST on cancellation	Rs.26,233/-
GST paid (already deposited to department)	Rs.1,44,886/-
Interest on delay payment as on 27 th October, 2020	Rs.3,824/-
Total deduction	Rs.3,20,680/-
Amount paid	Rs.19,55,944/-
Refunded amount	Rs.16,35,264/-

21. The further question for consideration before us is whether the deduction of Rs.3,20,680/- made by the promoter

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is in accordance with the policy of 2013. To address the said controversy, clause 5(iii)(h) of the Affordable Housing Policy as amended on 05.07.2019, relied upon by the promoter, is reproduced as under:-

Clause 5(iii)(h)

“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 the project.</i>	<i>Nil</i>
<i>(bb)</i>	<i>Upto 1 year from the date of commencement of the project.</i>	<i>1% of the cost of flat.</i>
<i>(cc)</i>	<i>Upto 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>

22. Upon perusal of the above said clause of the policy, it becomes evident that the above said clause pertains to surrender of the flat by the allottee, whereas, the current matter involves the cancellation of the flat by the promoter, as

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covered under clause 5(iii)(i) of the Affordable Housing Policy. The said clause 5(iii)(i) of the Affordable Housing Policy is already reproduced above in para 18 of this appeal.

23. Consequently, under the said clause 5(iii)(i), the promoter is only authorized to deduct Rs.25,000/- from the amount paid by the allottee. Deducting Rs.1,20,738/- as 5% of the flat's cost is not justified, as it does not align with the provisions of clause 5(iii)(i) of the Affordable Housing Policy.

24. The deduction of Rs.1,44,886/- for Goods and Services Tax (GST) raises a significant question regarding its validity. The promoter has failed to furnish any substantiating evidence demonstrating that the promoter had indeed disbursed this GST amount of Rs.1,44,886/- on behalf of the allottee or that such an expense arose as a direct result of the allottee's actions. The absence of such documentary proof casts doubts on the legitimacy of this deduction.

25. The interest amount of Rs.3,824/-, as indicated in the table under "interest on delayed payment," is also not recoverable, as it does not conform to the provisions of the Affordable Housing Policy.

26. According to clause 5(iii) (h) read in conjunction with clause 5(iii)(i) of the Affordable Housing Policy, the promoter is entitled to deduct only Rs.25,000/- from the

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amount paid by the allottee upon unit cancellation, and the remaining amount should be refunded to the allottee. Therefore, we find no legal infirmity with the order of the authority that the promoter can only deduct Rs.25,000/- from the amount paid by the allottee. Consequently, the promoter is obligated to refund the remaining amount of Rs. 2,95,680/- to the allottee (Rs.3,20,680 minus Rs. 25,000 equals 2,95,680). This sum of Rs.2,95,680/- has been retained by the promoter since the cancellation of the flat. Therefore, the allottee is entitled for interest at the rate of SBI's highest MCLR plus 2% (10.75% per annum) on the said amount of Rs.2,95,680/- from the date of the unit's cancellation till its realisation.

27. In view of the above, the impugned order passed by the learned Authority is modified in the manner indicated above. Consequently, the appeal filed by the allottee is partly allowed and appeal filed by the promoter stands dismissed.

28. No order to costs.

29. The amount deposited by the promoter (in appeal no.620 of 2022) i.e.Rs.2,95,680/- with this Tribunal in view of the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to

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the allottee subject to tax liability, if any, as per law and rules.

30. Copy of this order be placed on the record of Appeal No.620 of 2022 titled "Pyramid Infratech Private Limited vs. Sangita Lakhara".

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

32. Files be consigned to the record.

Announced:
September 25, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

CL