

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal Nos.618 of 2022

Date of Decision: 30.11.2023

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

Appellant

Versus

Ayush Shukla, H.No. 152-B, 6th Lane, Nishatganj, New
Hyderabad, Lucknow, Uttar Pradesh-226607.

Respondent

CORAM:

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

Argued by: Ms. Meher Nagpal, Advocate,
for the appellant.

None for the respondent (proceeded ex parte).

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL)

The present appeal has been preferred against the order dated 26.11.2021 passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Authority'), whereby Complaint No.1968 of 2021, filed by respondent/allottee for restoration of the flat in favour of the respondent/allottee was disposed of. The operative part of the impugned order is reproduced as under:-

“38. 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 is directed to refund the balance amount of Rs.1,96,498/- to the complainant after deduction of Rs.25000/- from the amount of Rs.2,21,498/- already deducted, failing which legal consequences would follow.”

2. As per the averments in the complaint, the respondent/allottee had applied for allotment of a residential unit/flat in the project being developed by the appellant/promoter known as “Pyramid Fusion Homes” under Affordable Housing Policy of Government of Haryana. In a draw of lots held on 15.03.2018, she was allotted unit no.608, measuring 578.27 sq. ft. carpet area and 100 sq. ft. balcony area, on 6th floor 2-BHK Type-C in Tower no.2 in the above said project on the same day. The total sale consideration of the unit was Rs.25,52,126/-. An ‘Apartment Buyer’s Agreement’ (hereinafter referred to as ‘the agreement’) was executed between the parties on 25.05.2018. The respondent/allottee had been paying the instalments on time and out of the total sale consideration of Rs.25,52,126/-, the respondent/allottee till the time of filing the complaint had paid an amount of Rs.12,76,062/- to the appellant/promoter.

The respondent/allottee met with an accident on 29.08.2019 and got his spinal cord injured. Therefore, on account of the spinal cord injuries suffered by him, he remained under treatment and thus could not pay the third instalment. The appellant/promoter cancelled the allotment of the unit on 31.08.2020 and refunded an amount of Rs.10,62,533/- on the same day. The respondent/allottee approached the appellant/promoter time and again to restore the allotment of unit but to no effect.

3. With these pleadings, the respondent/allottee filed the complaint seeking following relief:-

“i) Direct the promoter to revoke the cancellation done by the appellant/promoter.”

4. The appellant/promoter resisted the complaint on the ground of maintainability and suppression of material facts. It was pleaded that the agreement was consciously and voluntarily executed between the parties. The rights and obligations of the respondent/allottee as well as appellant/promoter are completely and entirely determined by the covenants incorporated in the agreement. The respondent/allottee has misconstrued and misinterpreted the clauses incorporated in the agreement dated 25.05.2018. It was submitted that as per clause 2.3 of the agreement, it is specifically mentioned that the amount of Rs.25,000/- plus

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taxes shall be treated as earnest money. The earnest money shall be liable to be forfeited in the event of surrender of allotment by the respondent/allottee and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of surrender/cancellation, the earnest money shall stand forfeited and the balance amount paid, if any, will be refunded to the respondent/allottee, without any interest. However, such refund shall be made only when the said apartment is re-allotted/sold to any other person. Moreover, the Town and Country Planning Department, Haryana amended the policy and notified the same on 05th July, 2019.

5. It was further pleaded that as per the Affordable Housing Policy, the respondent/allottee is in default of payment despite demand letter dated 02.09.2019, reminder letter dated 03.10.2019 and publication of the defaulter in daily Hindi newspaper 'Rastriya Sahara' on 20.10.2019. All this shows that the appellant/promoter complied with all the provisions of the policy and cancelled the unit of the respondent/allottee with adequate notice. Also the respondent/allottee had paid Rs.12,84,031/- towards the sale consideration and tax. Therefore, after deduction of cancellation charges i.e. Rs.2,21,498/-, an amount of

Rs.10,62,533/- was refunded by the appellant/promoter to the respondent/allottee on 31.08.2020. The respondent/allottee has no legal and valid claim against the appellant/promoter. The allegations levelled by the respondent/allottee are result of afterthought and have been advanced merely in order to bias the mind of the authority.

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

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 appellant/promoter contended that it is an admitted fact that the respondent/allottee defaulted in making certain payments as stipulated in the agreement. The appellant/promoter sent multiple payment reminders to the respondent/allottee. The appellant/promoter, then published a list of defaulters in the daily Hindi newspaper 'Rashtriya Sahara' dated 20.10.2019. The name of the respondent/allottee was also mentioned in the list of defaulters in the above said publication. She

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asserted that despite several reminders, no payment was received from the respondent/allottee, which constrained the appellant/promoter to cancel the allotment vide cancellation letter dated 08.11.2019. After cancellation, the appellant/promoter proceeded to refund an amount of Rs.10,62,533/- on 31.08.2020. In reply to the complaint, the appellant/promoter had categorically provided the following chart indicating the components comprised in total amount deducted by it:-

Description	Charges
Surrender Charges	Rs.25,000/-
Upto 2 years from the date of commencement of the project; 3% of the cost of flat	Rs.70,892/-
18% GST on cancellation	Rs.17,261/-
GST as on 31 st March,2019 (already deposited to department)	Rs.94,523/-
Interest on delay payment as on 8 th Nov., 2019	Rs.5,853/-
Other deduction (previous interest received)	Rs.7,969/-
Total deduction	Rs.2,21,498/-
Amount paid	Rs.12,84,031/-
Refunded amount	Rs.10,62,533/-

10. 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 appellant/promoter has deducted earnest money and taxes thereon as per clause 2 of the agreement.

11. She further asserted that the total amount paid by the respondent/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 appellant/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.

12. She further submitted that as per clause 10.3 of the agreement, the appellant/promoter is entitled to cancel the allotment of the unit and after such cancellation; the appellant/promoter is to refund the amount by forfeiting the booking amount paid for the allotment plus 3% of the cost of flat which is Rs.70,892/- plus GST and interest component on the delayed payment. The rate of interest shall be @ SBI highest MCLR plus 2%.

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

14. We have duly considered the aforesaid contentions.

15. Admittedly, the respondent/allottee approached the appellant/promoter for allotment of a flat in multi storey residential project of the appellant/promoter namely "Pyramid

Fusion Homes”. The respondent/allottee was successful in draw of lots held on 15.03.2018 and was provisionally allotted a unit bearing no. 608, measuring 578.27 sq. ft. carpet area and 100 sq. ft. balcony area, on 6th floor 2-BHK Type-C in Tower no.2 in the above said project on the same day. The total sale consideration of the unit was Rs.25,52,126/- as per the allotment letter dated 15.03.2018 issued under Affordable Housing Policy of Govt. of Haryana. Subsequently, the agreement between the parties for the said unit was executed on 25.05.2018. The respondent/allottee had made a total payment of Rs.12,76,062/-. However, due to the spinal cord injuries suffered by him, the respondent/allottee could not make payment for the instalment which was due on 31.08.2020. Consequently, the appellant/promoter gave notice to the respondent/allottee for making the payment. The appellant/promoter then published defaulters’ list of allottees in the daily Hindi newspaper ‘Rastriya Sahara’ on 20.10.2019. The appellant/promoter proceeded to cancel the allotment on 08.11.2019 and refunded an amount of Rs.10,62,533/- on 31.08.2020 after deducting Rs.2,21,498/- from the amount paid by the respondent/allottee .

16. To address the issue of cancellation, 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 instalments 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 instalments 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”.

17. The respondent/allottee paid an amount of Rs.12,76,062/- up to 15.03.2019 (Page no.144 of the paper book). The appellant/promoter gave reminders dated 02.09.2019 and 03.10.2019 for payment of an amount of Rs.3,19,015/- and Rs.3,20,965/- to the respondent/allottee to pay the due instalments (Page no.206 & 207 of the paper book). Admittedly, due to spinal cord injuries suffered by him, the respondent/allottee was hospitalized and could not pay the due instalments on time. Subsequently, 20.10.2019, the appellant/promoter published a notice for payment in the daily Hindi newspaper 'Rastriya Sahara,' and on 08.11.2019, a cancellation letter was issued. It is evident from the above sequence of events that the appellant/promoter adhered to the prescribed procedure outlined in clause 5 (iii)(i) of the 2013

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policy, justifying the cancellation of the respondent/allottee's unit due to non-payment of dues.

18. The Appellant/ promoter after cancellation of the unit has deducted an amount of Rs.2,21,498/- from the total amount of Rs.12,84,031/- paid by the respondent/ allottee as per the below mentioned table:

Description	Charges
Surrender Charges	Rs.25,000/-
Upto 2 years from the date of commencement of the project; 3% of the cost of flat	Rs.70,892/-
18% GST on cancellation	Rs.17,261/-
GST as on 31 st March,2019 (already deposited to department)	Rs.94,523/-
Interest on delay payment as on 8 th Nov., 2019	Rs.5,853/-
Other deduction (previous interest received)	Rs.7,969/-
Total deduction	Rs.2,21,498/-
Amount paid	Rs.12,84,031/-
Refunded amount	Rs.10,62,533/-

19. The question for consideration before us is whether the deduction of Rs.2,21,498/- made by the Appellant/ promoter 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 Appellant/ 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

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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>

20. 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 respondent/allottee, whereas, the current matter involves the cancellation of the flat by the appellant/promoter, as 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.

21. Consequently, under the said clause 5(iii)(i), the appellant/ promoter is only authorized to deduct Rs.25,000/- from the amount paid by the respondent/allottee. Deducting Rs.2,21,498/- as 3% 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.

22. The deduction of Rs.94,523/- 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 appellant/promoter had indeed disbursed this GST amount of Rs.94,523/- on behalf of the respondent/allottee or that such an expense arose as a direct result of the respondent/allottee's actions. The absence of such documentary proof casts doubts on the legitimacy of this deduction.

23. The interest amount of Rs.5,853/-, 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.

24. According to clause 5(iii)(h) read in conjunction with clause 5(iii)(i) of the Affordable Housing Policy, the appellant/promoter is entitled to deduct only Rs.25,000/- from the amount paid by the respondent/allottee upon unit cancellation, and the remaining amount should be refunded to the respondent/allottee. Therefore, we find no legal infirmity with the order of the authority that the appellant/promoter can only deduct Rs.25,000/- from the amount paid by the respondent/allottee. Consequently, the appellant/promoter is

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obligated to refund the remaining amount of Rs.1,96,498/- to the respondent/allottee (Rs.2,21,498 minus Rs. 25,000 equals Rs.1,96,498/-).

25. No other point was argued before us.

26. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant/promoter has no merit and the same is hereby dismissed.

27. No order as to costs.

28. The amount deposited by the appellant/promoter i.e.Rs.1,96,498/- 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 the respondent/allottee subject to tax liability, if any, as per law and rules.

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

30. File be consigned to the record.

Announced:
November 30, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)