

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

Complaint no.:	4266 of 2021
First date of hearing:	24.11.2021
Date of decision:	08.12.2023

Mahua Das

R/o #24, Ground Floor, K-3.1, Vatika India Next, Sector
83, Gurugram-122004

Complainant

Versus

GLS Infracon Pvt. Ltd.

Office address: 707, 7th floor, JMD Pacific Square, Sector-
15, Part-II, Gurugram, Haryana-122001

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate) with complainant in
person

Complainant

Shri. Sandeep Chaudhary (Advocate)

Respondent

ORDER

1. The present complaint dated 28.10.2021 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 28 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 as provided 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. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over of the possession, 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- Avenue 81", Sector-81, Gurugram
2.	Project area	5.66 acres
3.	Nature of the project	Affordable group housing
4.	DTCP license no. and validity status	34 of 2020 dated 30.10.2020 valid upto 29.10.2025
5.	Name of the Licensee	Anita Yadav and others
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 10 of 2021 dated 01.03.2021 Valid upto 31.12.2025
7.	Unit no.	D-905, 9 TH Floor (Page 28 of complaint)
8.	Unit admeasuring	581 sq. ft. (Page 28 of complaint)
9.	Allotment letter	06.07.2021 (Page 28 of complaint)



9.	Date of flat buyer's agreement	08.09.2021 (As per copy of BBA)
11.	Total consideration	Rs. 23,75,950/- (Page 29 of the complaint)
12.	Total amount paid by the complainant	Rs. 1,18,798/- (Page 4 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> <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.</i> <i>(Emphasis supplied)</i>
14.	Date of approval of building plans	08.02.2021 As per details submitted at the time of registration
15.	Date of obtaining the environment clearance	Not known as no document available on record
16.	Due date of delivery of possession	08.02.2025 [Note: due date calculated from the date of building plan approval i.e., 08.02.2021 as date of EC is not known]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Demand cum cancellation letter	24.07.2021 and 09.08.2021 (Page 35 and 36 of complaint)
20.	Cancellation letter	09.09.2021 (pg. 39 of written arguments filed by respondent dated 21.09.2023)



21.	Date of publication	25.08.2021 (pg. 5 of written arguments filed by respondent dated 21.09.2023)
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B. Facts of the complaint

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

- a. This is with reference to the affordable housing project "Avenue 81" at Sector - 81, Gurugram was launched by M/s GLS Infracon Pvt. Ltd, under the license no. 34 of 2020 dated 30.10.2020, issued by DTCP, Haryana, Chandigarh. The complainant, Mrs. Mahua Das is the law abiding citizen. Complainants are currently residing at plot no. 24 ground floor, K 3.1 Vatika Next, Sector 83, Gurugram 122004.
- b. That the complainant is allottee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016. The respondent company, **M/s GLS Infracon Pvt. Ltd** is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- c. The respondent, M/s GLS Infracon Pvt. Ltd advertised about its new project namely '**Avenue 81**' (hereinafter called as 'the project') in Sector 81 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims. In 2020, the respondent company issued an advertisement announcing an affordable group housing project "Avenue 81" at Sector - 81, Gurugram was launched by M/s GLS Infracon Pvt. Ltd, under the license no. 34 of 2020 dated 30.10.2020, issued by DTCP, Haryana, Chandigarh, situated at Sector - 81, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit

- in the said project. Respondent confirmed that the projects had got building plan approval from the authority.
- d. The complainant while searching for a commercial was lured by such advertisements and calls from the brokers of the respondent for buying a residential unit in their project namely Avenue 81. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.
- e. Relying on various representations and assurances given by the respondent company and on belief of such assurances, allottee namely Mrs. Mahua Das, booked a unit in the project by paying an amount of ₹1,18,798/- towards the booking of the said unit bearing no. D-905, in Sector 81, having carpet area measuring 581.4874 sq. ft. to the respondent dated 09.03.2021 and the same was acknowledged by the respondent. It is pertinent to mention here that at the time of booking the complainant was assured that project of the respondent company is eligible for 90% loan amount from various financial institutions specifically PNB Finance.
- f. That respondent after delay of more than 3 months sent an allotment letter dated 06.07.2021 to the complainant confirming the booking of the unit dated 09.03.2021, allotting a unit no. D-905, (hereinafter

referred to as 'unit') measuring 581.4874 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e., ₹ 23,75,950/- which includes basic price plus EDC and IDC, ETC and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

- g. That after repeated reminders and follow ups with the respondent. Respondent finally after delay of almost five months got builder buyer's agreement dated 08.09.2021, executed with the complainants. It is pertinent to note here that complainant duly and timely signed the agreement and sent the same to the respondent but respondent till date has failed to provide the copy of same to the complainant.
- h. That respondent sent an demand letter dated 07.07.2021, raising demand of ₹ 4,79,942/- on account of within 15 days from the date of issuance of the allotment letter. That respondent sent an reminder dated 24.07.2021 to complainant raising demand of ₹ 4,81,113/-. Further, levying interest at rate of 15% per annum. It is pertinent to mention here that after coming into force of the RERA Act,2016, builder cannot charge interest against the interest rate provided under the RERA Act,2016 and HARERA Rules framed thereafter.
- i. That complainant sent an email dated 02.08.2021, to the respondent company stating that complainant has applied and in process of getting the loan and the same was advised by the representative of the respondent company as the project is financed by the PNB Housing and 90% will be loan amount. Further, complainant was informed by the PNB Housing that certain paper work is due from the respondent



side due to which the loan amount cannot be sanctioned. Furthermore, requesting the respondent not charge any kind of interest due to fault on the part of the respondent.

- j. That respondent instated of replying to the email dated 02.08.2021, sent an final reminder dated 09.08.2021 to complainant demand to pay the amount of ₹ 4,81,113/-. Further, levying interest at rate of 15% per annum. It is pertinent to mention here that after coming into force of the RERA Act, 2016 builder cannot charge interest against the interest rate provided under the RERA Act, 2016 and HARERA Rules framed thereafter.
- k. That complainant sent an email dated 17.08.2021 to the respondent asking to provide the copy of the builder agreement, date to sing the agreement and payment receipt of 5% amount already paid. Further, mentioning that PNB Housing has told the complainant that they have not disbursed the single amount to the respondent as respondent has failed to submit the required documents to the PNB Housing. It is pertinent to mention here that respondent is wrongly charging the interest from year 2018 till date but contrary to that the complainant booked the said unit in March, 2021.
- l. That respondent sent an email dated 18.08.2021, to the complainant that mentioning that execution of the agreement is pending on the part of Tehsil and the same shall be done Tehsil start. Furthermore, that is has been well informed to the PNB that payment plan is not construction linked and the same shall be paid as per Affordable Housing Policy.

- m. That complainant sent an email dated 19.09.2021 to respondent stating the Following: - As I have kept you informed that PNB Housing (suggested by you) delayed my sanction earlier by more than a month, I had to approach Canara Bank afresh from where finally I have received the loan sanction letter (attached) on 6th September 2021 which I have informed your customer care representative on the same day when he called.. The trail mail from your representative clearly displays your issues with the bank. I have now also signed the builder buyer agreement on 8th September 2021 as instructed by you at the tehsil which as informed by you earlier, had some delays.
- n. During the period the complainant went to the office of respondent several times and requested them to resolve the issue and accept the amount and allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- o. It is abundantly clear that the respondent have played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to execute the BBA with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent

activities, deficiency and failure in service of the respondent is filing the present complaint.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)

- a. Direct the respondent to handover the possession of the subject unit.
- b. Restrain the respondent from raising the fresh demand for payment under any head.
- c. Direct the respondent not to cancel the allotment of the unit.
- d. Direct the respondent to accept the further amount due from the complainant.
- e. Direct the respondent not to charge any penalty from the complainant & to cooperate by providing the required documents for housing finance.
- f. Direct the respondent to quash the illegal demand vide letter dated 07.07.2021.
- g. Direct the respondent to set aside the letter dated 24.07.2021 & 09.08.2021 & restrain the respondent from charging any penalty from complainant.
- h. Direct the respondent to provide the copy of BBA executed.

5. On the date of hearing, the authority explained to the respondent/ promoter about 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 the respondent.

6. The respondent has contested the complaint on the following grounds:



- a. That the complaint under reply is neither tenable nor maintainable and the complainant does not have any cause of action to peruse the present complaint. Even by virtue of the complaint it is quite evident that the complainant has not paid anything apart from ₹1,18,798/- as booking charges and has failed to honour the financial discipline and obligation of timely payments. And on such failure to pay the further payments the respondent after giving sufficient reminders by way of letters dated 06.07.2021, 24.07.2021, newspaper advertisement dated 25.08.2021 and the final notice of cancellation dated 09.09.2021 and has already offered the amount of ₹ 61,262/- as refund after deducting the applicable deductions as per the cancellation policy dated 05.07.2019.
- b. That though the complainant has admitted that she defaulted in the due payments, however, the complainant is trying to hide behind false and frivolous allegations and though the complainant is seeking possession and other non-tenable reliefs.
- c. That the complainant has not disclosed any reason why the unit so allotted to the complainant be not cancelled. In fact the correspondences appended with the complaint itself show that the complainant was not having any readiness or willingness of making payments are the complainant is deliberately going in a fault finding mission now to cover up her own wrongs.
7. Copies of all the relevant documents have been filed and placed on the 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

8. The application of the respondent regarding rejection of complaint on ground of jurisdiction 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

9. 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

10. 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) The promoter shall-

(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.

11. 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.
12. 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. (Supra)*** 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."

13. 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 on the relief sought by the complainants.

F.I. Direct the respondent to handover the possession of the subject unit.

F.II. Restrain the respondent from raising the fresh demand for payment under any head.

F.III. Direct the respondent not cancel the allotment of the unit.

F.IV. Direct the respondent to accept the further amount due from the complainant.

F.V. Direct the respondent not to charge any penalty from the complainant & to incorporate by providing the required documents for housing finance.

F.VI. Direct the respondent to quash the illegal demand vide letter dated 07.07.2021.

F.VII. Direct the respondent to set aside the letter dated 24.07.2021 & 09.08.2021 & restrain the respondent from charging any penalty from complainant.

F.VIII. Direct the respondent to provide the copy of BBA executed.

14. The above mentioned reliefs are being taken up together as the findings with respect to one relief will affect the findings of other reliefs. The complainant was allotted unit no. D-905 on 9th floor, in the project "GLS Infratech-Avenue 81" by the respondent/builder for a total consideration of ₹ 23,75,950/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed on 08.09.2021. The possession of the unit was to be offered with 4 years from approval of building plans or from the date of environment clearance whichever is later. The due date of possession have been calculated from the date of building plan (08.02.2021) as the date of environment clearance is not



known. Accordingly, the due date of possession comes out to be 08.02.2025. The complainant paid a sum of ₹ 1,18,798/- only upon booking of the said unit up to 07.07.2021 i.e., at the time of application of the allotment. The respondent promoter on 06.07.2021 issued the allotment letter of the unit and on 07.07.2021 raised 2nd demand of 20% of the total cost of the unit which was as per the affordable policy, 2013 but, the complainant does not clear the outstanding amount. The respondent promoter thereafter issued two reminder letters with a gap of 15 days each dated 24.07.2021 and 09.08.2021 but the complainant instead of clearing the dues wrote to the respondent for demanding more than 20% amount without executing BBA. The respondent also agreed to the said query and executed the BBA on 08.09.2021 but the respondent on 25.08.2021 made publication in the daily newspaper Dainik Jagran about the defaulter wherein the said unit was also mentioned and the respondent gave time to the complainants to clear the dues by 08.09.2021 which the complainant was not aware of as argued during the course of hearing dated 29.09.2023. The complainant was always ready and willing to retain the allotted unit in question as the complainant has applied the home loan and also receive the pre-approval of the bank to the finance of the said unit on 14.07.2021. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 09.09.2021. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the main question which arises before the

authority for the purpose of adjudication is that “whether the said cancellation is a valid in the eyes of law?”

15. The authority throws its light upon the cancellation letter dated 09.09.2021. No doubt the respondent issued the cancellation letter as per the affordable policy, 2013 after publication dated 25.08.2021 but the malafide intention of the respondent can be traced from the fact that the respondent on one hand signed the BBA on 08.09.2021 i.e., after issuance of publication of defaulters in daily newspaper dated 25.08.2021 and thereafter signed the BBA with the complainant on 08.09.2021 and soon after that on the very next date cancelled the unit on 09.09.2021. Accordingly, publication of defaulters list in the newspaper dated 25.08.2021 is set aside by the own act of respondent itself as the parties executed the BBA which clearly means that a new correspondence is started between the parties. Therefore, the said cancellation of the unit dated 09.09.2021 is hereby not valid and the authority set aside the same.
16. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit. Moreover, the cancellation letter dated 09.09.2021 is set aside as referred above the respondent is hereby directed to re-instate the said unit of the complainant and the complainant is also directed to make the payment of the outstanding amount according to the payment plan as prescribed under the Affordable Policy, 2013. Since, the due date of possession as mentioned above comes out to be 08.02.2025 therefore, no direction with respect to the handing over of possession of the unit can be deliberated by the authority at this point.

G. Directions of the authority:

17. 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):
 - a. The promoter shall not charge anything which is not part of the buyer's agreement. the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020
 - b. The respondent is directed to re-instate the unit of the complainant, within 30 days from the date of this order. The complainant is also directed to pay the outstanding dues as per the policy, 2013.
18. The complaint stands disposed of. True certified copies of this order be placed on the case file.
19. Files be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.12.2023