



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

**Complaint no. :** 4759 of 2022  
**Date of decision:** 15.05.2024

Darshana Tanwar  
**R/O:** 216, Ward no.-11, Thakarwara,  
Sohna, Haryana

**Complainant**

Versus

M/s GLS Infratech Pvt. Ltd.  
**Regd. office:** 707, 7<sup>th</sup> Floor, JMD Pacific Square,  
Sector-15, Part-II, Gurgaon, Haryana

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Vijender Parmar (Advocate)

Complainant

Sh. Harshit Batra (Advocate)

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 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 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. N.	Particulars	Details
1.	Name and location of the project	"Arawali Homes" at village Khaika & Sohna, sector 4, Sohna, District-Gurgaon, Haryana
2.	Nature of the project	Affordable Housing Colony
3.	Project area	10 acres
4.	DTCP license no.	110 of 2014 dated 14.08.2014 valid up to 11.04.2020
5.	Name of licensee	G.L.S Infratech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 05 of 2020 dated 20.01.2020 valid up to 07.03.2024
7.	Date of approval of building plans	01.10.2014
8.	Date of receipt of environment clearance	12.04.2016
9.	Unit no.	T20-503, Floor-5 <sup>th</sup> , Tower-20 (As on page no. 12 of the complaint)
10.	Unit area admeasuring	643 sq. ft. (carpet area) (Page no. 12 of the complaint)
11.	Allotment letter	29.01.2021 (As on page no. 12 of the complaint)
12.	Date of flat buyer agreement	Not executed
13.	Due date of possession	<b>12.10.2020</b> [Note: - Calculated from date of approval of building plan sanction + 6 months on account of covid ]
14.	Total sale consideration	Rs.23,64,944/- (As on page no. 13 of the complaint)
15.	Amount paid by the complainant	Rs.8,94,293/- (As per bank statement on page no. 16-20 of complaint)
16.	Demand invoice	25.08.2021 (As on page no. 47 of reply)
17.	Cancellation letter	09.12.2021 (As on page no. 21 of complaint)



18.	Public notice in newspaper	Date cannot be ascertained (As on page no. 50 of reply)
19.	Notice sent by complainant	21.01.2022 16.03.2022 (As on page no. 24 of complaint)
20.	Occupation certificate	22.05.2020
21.	Offer of possession	Not offered
22.	Cancellation letter	09.12.2021 (As on page no. 21 of complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That the respondent is working in field of construction and development of residential as well as commercial projects across the country with the name of "GLS Infratech Private Limited". That the subject matter of the present complaint i.e., the real estate project named "ARAWALI HOMES-2" is situated at Damdama Lake Road, Village-Khaika, Sector-4, Sohna, District-Gurugram, Haryana.
- II. That in 2021, the respondent through its marketing executives and advertisement approached the complainant with an offer to buy apartment in the proposed project. The respondent assured the complainant that the all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification has been already obtained.
- III. Relying upon those assurances and believing them to be true, the complainant booked a residential apartment bearing no. T20-503, located on 5<sup>th</sup> Floor, in Tower-20 admeasuring 643.04. sq.ft. Thereafter upon multiple requests of the complainant, the respondent issued



allotment letter dated 29.01.2021 in favor of the complainant for the aforesaid apartment.

- IV. That the respondent thereafter kept on delaying the execution of the Apartment Buyer's agreement on one or the other pretext and did not execute it despite various requests of the complainant without giving any satisfactory reason.
- V. That from the date of booking the respondent raised various demands for the payment of installments towards the sale consideration of the said apartment and the complainant duly paid all those demands without any default or delay on their part. The complainant had paid Rs 8,94,293/- towards the sale consideration to the respondent as demanded from time to time.
- VI. That to the utter shock and dismay of the complainant despite the default in delivery of possession and execution of buyer's agreement on time as agreed, the respondent issued an illegal cancellation notice on 09-12-2021 and without giving any opportunity to the complainant of being heard, unilaterally and arbitrarily cancelled the allotment without providing any valid and satisfactory reason.
- VII. That thereafter, the complainant approached the respondent against such illegal and arbitrary action of the cancellation of unit. Upon the such protest, the respondent asked the complainant to pay Rs.3,12,587/- towards the sale consideration of the said unit and promised that the said cancellation notice dated 09.12.2021 will be automatically withdrawn upon issuance of such cheque. Accordingly, the complainant issued a cheque bearing no. 004571 dated 31.12.2021 for Rs. 3,12,587/- in the name of the respondent. That the receipt of said cheque was duly acknowledged by the respondent. Upon receipt



of the said cheque, it was assured by the respondent that there were no outstanding against the complainant, more than the amount mentioned in the cheque and the notice of cancellation would be withdrawn in due course and will not have any legal effect.

- VIII. Thereafter the complainant kept following up with the respondent to provide proof of withdrawal of the cancellation notice and on each and every follow up, it was assured by the respondent that the notice of cancellation was already withdrawn in the records of respondent and will not have any legal effect.
- IX. Thereafter, the complainant issued legal notices to the respondent through her lawyer on 25.01.2022 and 16.03.2022. However, the respondent being adamant upon its illegal stand neither replied to the said legal notices nor withdrew the cancellation notice.
- X. However, all the promises and assurances made by the respondent proved to be false and frivolous and the respondent now is informing the complainant upon enquiry that her unit is already cancelled and the amount paid by her is already forfeited without giving any reason. That the respondent has failed to fulfil their obligations bestowed upon them by the contract as well the law and the complainants are still waiting for the legal and valid possession of their apartment despite payment of the majority of the sale consideration and expiry of promised date of delivery.
- XI. That the conduct on the part of the respondent has cleared the dust on the fact that all the promises made by the Respondent at the time of sale of said apartment were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce



the complainant to buy the said residential apartments basis its false and frivolous promises, which the respondent never intended to fulfill.

- XII. That the cause of action accrued in favor of the complainant and against the respondent, when the said apartment was booked by the complainant and thereafter on when the allotment letter was issued for the said apartment and on 09.12.2021 when the notice of cancellation was issued for said apartment and on the promised date of the delivery of possession of the said apartment and the cause of action is still continuing as the respondent failed to handover the actual legal possession of said apartment and execute the conveyance deed till today and also failed to pay the delay possession charges as per law to the complainant despite repeated requests, reminders and promises.

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

4. The complainant has sought following relief(s):
- i Direct the respondent to set aside the cancellation notice dated 09.12.2021 declaring it illegal, arbitrary, null and void.
  - ii Direct the respondent to handover the actual physical possession of the apartment.

**D. Reply by respondent:**

5. The respondent has made following submissions:
1. That the complainant being interested in the affordable housing project of the respondent known under the name and style of "ARAWALI HOMES-2" applied for the allotment of a flat vide application no. 7767 dated 28.01.2021 and was consequently allotted unit no. T20-503, 5<sup>th</sup> Floor in Tower T 020, admeasuring 643.04 sq. ft. through the draw of lots. Subsequently, Allotment letter dated 29.01.2021 was issued to the complainant.



- II. That the relationship between the parties is contractual in nature therefore, the rights and obligations of the parties are governed by the application form and allotment letter. At the outset, it must be noted that the complainant willingly, consciously and voluntarily applied for the purchase of the unit in the project. Hence, the complainant agreed to be bound by the terms and conditions of the application form and the allotment letter executed between the parties. Moreover, the amount payable to the respondent was agreed upon by the parties via the said allotment letter and mutual understanding between the parties.
- III. That it is submitted that the complainant was responsible to make timely payments for the unit to the respondent according to the terms and conditions of the application form, allotment letter . The relevant clauses of the allotment letter and the application form are reiterated hereunder:

**APPLICATION FORM**

*4.3..... It is hereby expressly and unconditionally accepted and agreed to by the Applicant that time is of essence with respect to the Applicant's obligation to make any and all payments hereunder including the payment of any part of Total Price, payment of any and all other applicable charges, considerations, interest, deposits, penalties and other payments such as applicable stamp duty, registration fee etc....*

**ALLOTMENT LETTER**

*"It is clearly agreed to and understood by you that it shall not be obligatory upon the Company to send intimation or demand notices/reminders regarding the payments to be made by you as per the Schedule of payments or obligations to be performed by you. It is hereby expressly and unconditionally accepted and agreed to by you that time is of essence with respect to your obligation to make any and all payments hereunder including the payment of any part of Total Price, payment of any and all other applicable charges, considerations, interest, deposits, penalties and other payments....."*

*[Emphasis supplied]*



- IV. It is submitted that the total sale consideration of the unit is Rs.23,64,944/- exclusive of any other development charges, taxes, duties, levies, cess etc. That out of the total demand raised by the respondent, the complainant only made the payment of Rs.8,94,293/- which is less than 40% of the total sales consideration of the unit.
- V. That the complainant failed to fulfil her obligations of payment of the instalment against the total sales consideration of the unit. That the respondent had raised invoice dated 25.08.2021 on the milestone of "Second Six Monthly Instalment on completion of 50% of super structure". The complainant failed to fulfil this demand as is evident from the customer ledger dated 09.12.2021. That upon the non-payment of the dues against the unit the respondent issued public notice upon non-payment therefrom.
- VI. That the complainant cannot be allowed to take benefit of their own wrong hence, the complaint is liable to be dismissed with costs against the complainant. The Hon'ble Supreme Court noted in case *Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors*, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 that the payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and if he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.
- VII. That despite the transparent and clean conduct of the respondent, the complainant failed to fulfil her contractual obligations. Despite the public notice being issued to the complainant, the complainant failed to make the requisite payments. That having left with no other option, the respondent issued a public notice of the list of defaulters-allottee in the regional newspaper.





- VIII. The despite the public notice issued in the newspaper, the respondent sent the Notice for Cancellation to the complainant on 09.12.2021 due to the payment default of the complainant as per Allotment Letter and Application Form. The clauses are reiterated below:

**THE APPLICATION FORM**

1.4 ...Upon the failure of the Applicant to clear the entire due amount including interest on the delayed payment within this additional period of 15 (fifteen) days, the Applicant shall be deemed to have surrendered his allotment of the Apartment and resultantly the allotment shall stand cancelled without the need for the Company to do or undertake any more steps.

Upon such cancellation, the Applicant shall forfeit to the Company the amount of the Earnest Money as well as any processing fee, brokerage, taxes, interest on delayed payment and the amount of any other fine or penalty paid/ payable by the Applicant, the Applicant shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said Apartment, and the Applicant shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said Apartment along with the parking space and/ or any part of the said Project or against the Company or any of its directors, shareholders, employees or agents. The amount(s) if any, paid over and above the Earnest Money, processing fee, interest on delayed payments, taxes, interest on installements, brokerage, amount of any fine or penalty and therefore along with deductions of all such amounts, the amount of GST shall also be payable and deductible from the amount paid by the Applicant to the Company.

**THE ALLOTMENT**

"If you still default in making payment of the amount due along with interest within the said period of 15 (fifteen) days, the Company may publish your name in a regional Hindi newspaper in Haryana as a defaulter requiring the payment of the amount due within 15 (fifteen) days from the date of the publication of such notice. Upon the failure on your part to clear the entire due amount within this additional period of 15 (fifteen) days, your allotment of the Apartment shall stand cancelled without the need for the Company to do or undertake any more steps.

[Emphasis supplied]

- IX. That as noted above, after the termination of the agreement, no right or lien of the complainant exists in the said unit and the builder-buyer



relationship between the parties came to an end. That 'no person should be granted the benefit of their own wrong' is a settled principle of law, and is squarely applicable in the present case, where the default of the complainant had led to the termination of the unit.

- X. That as per the terms and conditions as laid down in the application form and the allotment letter upon the cancellation of the unit, the respondent is entitled to forfeit the earnest money along 3% of the total price of unit along with the processing fee, brokerage, taxes, interest on delayed payment and the amount of any other fine or penalty.
- XI. Moreover, the respondent is also entitled to forfeit the statutory dues liked as held by the Hon'ble Haryana Real Estate Appellate Tribunal in *Ravinder Pal Singh v Emaar MGF land Ltd. Appeal No.255 of 2019* allowed the forfeiture of earnest money along with "the statutory dues already deposited with the government". Accordingly, the respondent is also entitled to deduct the statutory dues like GST from the amount to refunded after forfeiture.
- XII. That the deductions on account of cancellation was communicated to the complainant through cancellation letter dated 09.12.2021. It is also pertinent to mention that through the letter dated 09.12.2021, the respondent has been pursuing the complainant to share the bank account details or cancelled cheque to do the needful of refund.
- XIII. Without prejudice to the ongoing paras of the reply it is submitted that that as per the Clause 5 of the Application form dated 28.01.2021 as well as the Affordable Housing Scheme, 2013, the due date of handing over the possession of the said unit is within a period of 4 years from the date of grant of sanction of building plans i.e 14.11.2019. Hence, the due date of offer of possession is yet to come and thereby the complaint is



premature. That there is no default of the complainant however, it is solely due to the default of the complainant that the unit of the complainant has been lawfully terminated.

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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

7. The authority 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;*

10. 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. Findings on the relief sought by the complainant:**

**F.I Direct the respondent to set aside the cancellation letter dated 09.12.2021 and declare it void, illegal, arbitrary.**

**F.II Direct the respondent to handover physical possession of the unit to the complainant.**

11. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

12. Clause 5 of the application form provides the time period of handing over possession and the same is reproduced below:

***" 5. POSSESSION***

*5.1 Subject to the grant of occupation certificate by the competent governmental authority and other situations beyond the reasonable control of the Company*

*including force majeure conditions or any judicial/quasi-judicial/administrative orders/directions or administrative acts or omissions or administrative delays and subject to the Applicant performing all of his/her obligations under the terms of this Application or the Apartment Buyer's Agreement, the Company shall endeavour to handover the possession of the Apartment **within a period of 4 (four) years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later.** Company shall be entitled to extension of time for any delay caused on account of any of the aforesaid reasons and no action shall lie against the Company or any of its directors, employees, shareholders or affiliates on this account. For the avoidance of doubt, force majeure conditions shall include acts of god, terrorism, shortage of energy, labour, equipment, facilities, material or supplies, failure of transportation, strike, lock-outs, action of labour union, change of law, any order or direction from any court, tribunal or authority or any administrative acts or omissions or administrative delays, etc.,*

*[Emphasis supplied]*

13. The complainant booked a unit in the affordable group housing colony project of the respondent known as "Arawali Homes 2" situated at Damdama Lake Road, Village-Khaika, Sector-4, Sohna, Haryana and was allotted a unit bearing no. T20-503, on 5<sup>th</sup> floor in tower- 20 of the project vide allotment letter dated 29.01.2021 for a total sale consideration of Rs.23,64,944/- out of which the complainant had paid an amount of Rs.8,94,293/-.
14. As per the possession clause the possession of the unit was to be offered within 4 years from the date of approval of building plans (01.10.2014) or from the date of environment clearance (12.04.2016), whichever is later. The environmental clearance was received later i.e., 12.04.2016, so it will be taken into account and 4 years will be calculated from 12.04.2016 which comes out to be 12.04.2020. Further, a period of 6 months will also be added to this as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Therefore, the due date comes out to be **12.10.2020**.

15. The respondent vide reminder/demand letters dated 25.08.2021, 21.10.2021 and final reminder letter dated 04.11.2021 intimated the complainant for payment of the outstanding dues but she failed to adhere the same. It is observed that the complainant failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 09.12.2021. The counsel for the complainant during the proceedings dated 03.04.2024 stated that after receiving the said cancellation letter, the complainant issued a cheque in favour of the respondent on 31.12.2021 and the respondent had accepted the said cheque on 23.12.2021 and the said transaction took place after the respondent issued the cancellation notice on 09.12.2021. The counsel for the respondent rebutted it saying that the cheque was received at the reception of respondent and has never been encashed.
16. 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 09.12.2021. In line with the aforesaid facts, the documents and submissions 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?"
17. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"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 newspaper 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, failing which allotment may be cancelled. In such cases*

*also an amount of Rs.25,000/- may be deducted by the coloniser 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".*

18. The respondent company has issued demand cum reminder letters dated, 25.08.2021, 21.10.2021 and final reminder on 04.11.2021. The respondent company had obtained the occupation certificate on 22.05.2020. On the failure of the complainant in making payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit after publishing a list of defaulters in the daily hindi newspaper on 08.12.2021.
19. As per clause 5(iii)(b) of the Policy of 2013, the allottee/applicant is under obligation to deposit the 25% amount of the sale consideration of the unit till allotment. However, in the present case, the complainant/allottee has paid an amount of Rs.8,94,293/-. Accordingly, the respondent /builder issued reminders and a final reminder on 04.11.2021 to the complainant. But on the failure of the complainant in making payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit after publishing a list of defaulters in the daily hindi newspaper on 08.12.2021. The authority is of the considered view that the respondent /builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 09.12.2021 is held to be valid.
20. As per clause 5(iii)(i) of the Affordable Housing Policy of 2013, in case of cancellation the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is

directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest from date of cancellation of allotment i.e., 09.12.2021 till the actual realization of the amount.

**H. Directions of the Authority:**

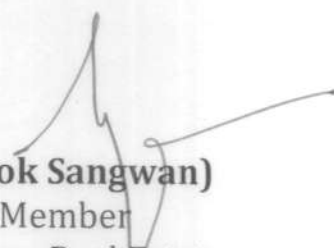
21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed refund the paid-up amount of Rs.8,94,293/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment i.e., 09.12.2021 till the actual realization of the amount.
- ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

22. Complaint stands disposed of.

23. File be consigned to the registry.

Dated: 15.05.2024



**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram