

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

Complaint no. : 2498 of 2022
Date of decision : 22.05.2024

Sh. Vikas
R/o: - 364 A-1, Budh Vihar,
Munirka Village, SouthWest Delhi,
New Delhi.

Complainant

Versus

M/s Gls Infratech Pvt. Ltd.
Regd. Office At: 311, Floor-33rd, JMD pacific
square, Sector-15, Part-II.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Manish Chauhan (Advocate)
Harshit Batra (Advocate)

Complainant
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 provisions 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Arawali Homes, Sector-4
2.	Nature of the project	Commercial complex
4.	DTCP license no.	110 of 2014 dated 14.08.2014
6	Provisional allotment letter	16.03.2020
7	Unit no.	S-107, 1 st floor
8	Area of the unit (super area)	250 sq. ft.
9	Buyer's agreement executed	Not executed
10	EC received on	12.04.2016
11	Due date of possession	12.04.2020 (As per application form)
12	Transfer letter dated	20.01.2021 (Page 24 of the reply)
13	Total consideration	Rs. 16,60,000/-
14	Total amount paid by the complainant	Rs. 1,79,280/-
15	Cancellation letter	24.03.2022
	Occupation certificate on	22.05.2020
16	Offer of possession	05.01.2021

B. Facts of the complaint

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

- I. That on the representation and offer by the respondent, Mrs Rajwanti (mother of the complainant) applied for a shop in the project "Crown Plaza-1" situated at Dumdama Lake Road, Sector-4, Sohna, Haryana by depositing a sum of Rs.9,820/- as application money and Rs.1,70,000 as booking advance. Accordingly, unit/shop no S-104 was allotted to her and an allotment letter dated 11.01.2021 was issued in her favour. The total sale consideration of the unit as per the allotment letter was Rs.16,60,000/-. The allottee, i.e. Mrs Rajwanti applied for a bank loan to finance the cost of the shop which was not approved due to some technical reasons. The complainant visited the office of the respondent with her mother alongwith the bank official and a meeting was held in January 2021. In the presence of the bank official it was advised by the office of the respondent to seek substitution of the name of allottee as builder buyer's agreement has not been signed. For this purpose necessary documents were supplied which were to be completed and submitted for substitution of allottee's name.
- II. Accordingly all documents were prepared and submitted along with application for substitution of the name from Mrs. Rajwanti to Vikas (complainant). The respondent retained all the document which were issued to the mother of the complainant and the complainant was assured that a new letter of allotment will soon be issued in his favour. Based on the assurances by the respondent, the complainant applied for bank loan, approval of the said loan was delayed due to the second phase of covid-19.



- III. At this stage the complainant approached the respondent office for issuance of revised allotment letter in his favor but no satisfactory reply was given. After several visits to the office of the respondent, a complaint ticket no. 13770 dated 13.11.2021 and no. 13449 dated 20.11.2021 were issued, but no final reply was issued.
- IV. The respondent vide email dated 08.12.2021 conveyed that the matter is under consideration and discussions with the management is going on. Thereafter, on visiting the office of the respondent, the complainant was told that the allotment has been cancelled. No notice of cancellation was ever given to the complainant despite his regular visits and persuasion with the respondents including Ms. Renu Rai (Director of the company). The complainant then sent a letter dated 24.11.2021 by speed post, asking for reasons of cancellation of the allotment but no reply in respect of such cancellation has been given.
- V. That neither the letter of allotment was ever given/ sent to the complainant nor any notice of cancellation was given but the letter of cancellation dated 24.03.2022 has been issued to the complainant which surprisingly also mentioned that no refund is due. The respondent cancelled the allotment without any reason and without notice to the complainant and retained the booking amount which is in utter violation of norms and rules and amounts to malpractice on the part of the respondent

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to revoke the cancellation letter.
 - II. Direct the respondent to re-allot the unit in favor of the complainant.



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 vide its reply dated 31.10.2023 on the following grounds: -
- I. That the complainant is estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. The original allottee, Mrs. Rajwanti being interested in the affordable group housing project of the respondent known under the name and style of "Arawali Homes" and applied for the allotment of the unit in the project through application form and subsequently made payment of Rs.1,70,000/- vide cheque dated 24.02.2022 and Rs.9,280/- vide cheque dated 13.03.2021 and was consequently allotted shop no. 107 at 1st Floor in Crown Plaze -1, admeasuring tentatively of 250 sq. ft.
 - II. That subsequently allotment letter dated 16.03.2020 was issued to the original allottee. Thereafter, the original allottee approached the respondent to transfer the said unit in favour of the complainant, who is the son of the original allottee and thereby requested the respondent for the same vide letter dated 20.01.2021.
 - III. At the outset, it must be noted that the original allottee willingly, consciously and voluntarily booked the unit in the project of the respondent after reading and understanding the contents of the application form and allotment thereof her full satisfaction and after her personal investigation and enquiry. Hence, the original allottee



- agreed to be bound by the terms and conditions in the application form and the allotment. Moreover, the amount payable to the respondent was agreed upon by the parties via the said application form and allotment letter and mutual understanding.
- IV. That it is submitted that the original allottee and subsequently the complainant was responsible to make the timely payments according to the terms and conditions of the allotment letter.
- V. However, the original allottee and subsequently the complainant has defaulted in making payment with respect to the unit and has only made the payment of Rs.1,79,260/- at the time of booking of the unit which amount to less than 10% of the total sales price of the unit.
- VI. That as per the payment plan the allottee had to pay the next instalment within 45 to 60 days of booking and last installment was to be paid on offer of possession. However, the original allottee and subsequently the complainant failed to comply with the obligation as is evident from the customer ledger
- VII. That it is pertinent to note than that the respondent issued various payment letter and reminders upon non-payment therefrom. Thus, the complainant cannot be allowed to take benefit of his own wrong hence, the complaint is liable to be dismissed with costs against the complainant.
- VIII. That it is pertinent to mention that even after the default in making the payment of outstanding dues by the original allottee and complainant, they sent a copy of the builder buyer agreement to the complainant for the execution but the complainant miserably failed to send the signed copy of the same to the respondent even after various reminders.



- IX. That the *bonafide* of the respondent is pertinent to mention here that even after the various defaults by the complainant and the original allottee in remittance of outstanding dues and execution of the agreement, the respondent made the offer of possession of the unit vide offer of possession dated 05.01.2021 in order to take the possession of the unit and clear the outstanding dues as per the payment plan opted. But the original allottee and the complainant failed to take the possession of the said unit and clear the outstanding dues.
- X. That the original allottee and subsequently the complainant stood in a condition of default of not making the pre-requisite payments and not taking the possession of the unit, after having been rightly offered. It is categorically highlighted that despite the transparent and clean conduct of the respondent, the complainant failed to fulfil obligations. Consequently, the respondent sent the cancellation letter dated 03.11.2021 to the complainant. Thus, there exists no subsisting contractual relationship between the parties. It is submitted that the unit stands terminated and the complainant thereby has no rights or titles on such unit.
- XI. That upon the cancellation of the unit, the respondent forfeited the earnest money i.e the 10% of the total sale consideration of the unit, from the amount paid by the complainant. That the total amount paid by the being less than 10% has been forfeited by the respondent as has been also communicated to the complainant vide the said cancellation letter.
- XII. That as per clause 4 and 6 of the application form upon the cancellation of the unit, the respondent is entitled to forfeit the



earnest money along with the brokerage/ commission paid to the real estate agent/ broker.

5. 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 submissions made by the parties.

E. Jurisdiction of the authority

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;



9. 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 revoke the cancellation letter.

F.II Direct the respondent to re-allot the unit in the name of the complainant.

10. The original allottee booked a unit in the project named "Crown Plaza-1" at Dumdama Lake Road, Sector-4, Sohna, Gurugram, Haryana and was provisionally allotted a unit bearing no. S-106 admeasuring 250 sq.ft. at the total consideration of Rs. 17,92,800/-. Thereafter, the original allottee on 20.01.2021 requested the respondent to endorse the unit in the name of the complainant (Mr. Vikas).
11. The respondent has stated in its reply that the total consideration of the shop was Rs.17,92,800/- and the complainant has only paid 10% of the booking amount amounting to Rs.1,79,280/-.As per clause 10 of the application form , the respondent undertook to complete the construction of the unit on or before 12.04.2020. The occupation certificate was granted by the competent authority on 22.05.2020 and the offer of possession was made to the complainant on 05.01.2021. The unit was cancelled on 03.11.2021 on account of non-payment of dues and the amount paid by the complainant was forfeited.
12. However, the cancellation letter is not there on record and the complainant also states that he did not receive the cancellation letter. The authority is of the view that the proper course of cancellation was not followed by the respondent as there is no record of the reminder



letters/pre cancellation letter sent by the respondent to the complainant in lieu of the outstanding dues.

13. In the proceedings dated 27.03.2024, the counsel of the respondent stated that the concerned shop is available on the present day, no third party rights in respect to the said shop has been created and the respondent is willing to revive the allotment subject to payment of balance dues with interest at the prescribed rate.
14. In view of the same, the cancellation letter dated 03.11.2021 is set aside and the respondent is directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order and issue a fresh statement of account. As per section 19(6) & 19(7) of the Act every allottee is responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding amount from the allottee. Therefore, the complainant/allottee is directed to make the requisite outstanding payments within next 6 weeks along with interest at the prescribed rate i.e., 10.85%.

G. Directions of the Authority:

15. 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 cancellation letter dated 03.11.2021 is set aside and the respondent is directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order and issue a fresh statement of account.

- ii. The complainant/allottee shall make the requisite payments at the prescribed rate of interest i.e. 10.85% of the subject unit as per the provisions of sections 19(6) & (7) of the Act of 2016, within a period of next 6 weeks.
- iii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees., in case of default as per section 2(za) of the Act, 2016.
16. Complaint stands disposed of.
17. File be consigned to the registry.

Dated: 22.05.2024

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory
Authority, Gurugram