

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

**Complaint no. :** 4734 of 2023  
**Complaint filed on:** 18.10.2023  
**Order pronounced on:** 22.08.2024

Kapil Dev Sharma  
R/o: House No.202, Sector-56, Gurugram, Haryana **Complainant**

**Versus**

M/s GLS Infraprojects Private Limited  
**Regd. office:** 707, 7<sup>th</sup> Floor, Pacific Square, Sector-15,  
Part-II, Gurugram, Haryana **Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal **Member**

**APPEARANCE:**  
Shri Ravi Sharma (Advocate) **Complainant**  
Shri Harshit Batra (Advocate) **Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 allottee as per the agreement for sale executed inter-se them.

**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. N.	Particulars	Details
1.	Name of the project	Avenue - 51
2.	Project location	Sector 92, Gurugram, Haryana
3.	Project type	Affordable Housing Policy
5.	Allotment letter dated	05.06.2018 (As per page no 19 of complaint)
6.	Date of apartment buyer agreement	Not Annexed
7.	Unit no.	J-607, 6 <sup>th</sup> Floor, Tower -J (As per page no. 19 of the complaint)
8.	Unit area admeasuring	303 sq. ft (As per page no. 19 of the complaint)
9.	Possession clause	N/A
10.	Due date of possession	N/A
11.	Total sale consideration	Rs. 12,24,500/- (As per page no. 50 of the complaint)
12.	Amount paid by the complainant	Rs. 9,92,543/- (As per page 5 of complaint) <i>However, no receipts are annexed.</i>
13.	Amount returned by the Developer	Rs. 8,53,216/- (As per page 6 of complaint) <i>However, no receipts are annexed.</i>
13.	Occupation certificate	15.03.2021 (As per page no 22 of the reply)
15.	Cancellation request by complainant dated	08.08.2020

**B. Facts of the complaint**

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

- a. That the complainant came across to respondent's representations/endorsements with respect to the project Avenue-51 situated at sector92, Gurugram, Haryana and believing respondent's said representations and respondent name in the real estate industry, the complainant made an application for the draw of lots for purchasing one independent floor/residential apartment in the said project on 16.04.2018.
- b. That complainant's name was selected in the draw of lots and vide application no. 05210 dated 05.06.2018 and the complainant was offered to purchase a residential apartment having approximately admeasuring 303 sq. ft. (carpet Area) in the said project at 6<sup>th</sup> floor on the residential apartment situated within the said project.
- c. As agreed between the respondent and the complainant the total sale consideration for the said residential apartment was Rs. 12,24,500/-. On 05.06.2018 vide allotment letter, respondent had allotted residential apartment no. J-607, located on 6th flooring in Tower J and also allotted one two-wheeler parking admeasuring 0.8m X 2.5m earmarked in the said project.
- d. The respondent offered to hand over the physical possession of the Flat to the purchaser(s) with in a period of forty-eight (48) months from the commencement date. That as per the HRERA norms the builder cannot take more than 10% of the total amount till any agreement to sell or any agreement is entered between the parties.
- e. That towards the advance payments against the sale of the residential apartment, the respondent was making demands against which complainant made payment from time to time. Thereafter, in total, the complainant has paid respondent an amount of Rs.9,92,534/- towards

sale consideration of the said residential apartment. That it is pertinent here to mention that the complainant has not signed the apartment buyer agreement with the respondent.

- f. That the builder had breached the norms of the Act by taking more than 10% of the total selling price and till yet no apartment buyer agreement had been executed between the parties. That there is not much construction at the site due to which complainant wished to withdraw from the project and asked for return for the whole amount paid to the respondent.
- g. The complainant has been in regular contact with respondent's office and to his representatives for the purpose of knowing the status of the said project. But to utter shock and surprise to complainant the respondent had never replied to communications.
- h. The complainant on 08.08.2020 requested respondent to cancel its allotment and return for his hard-earned money amounting to Rs. 9,92,534/-. The complainant again wrote respondent many emails asking for the status for cancellation but respondent was not replying properly and was not telling the exact amount to be refunded to complainant as there was a delay in the project. That complainant also talked to respondent customer care and they were also of no help.
- i. Only after multiple follow-ups respondent cancelled respondent's allotment and returned an amount of Rs.8,53,216/- on 14.06.2021. However, the respondent has deducted an amount of Rs. 1,39,216/-. That the deduction made by respondent is illegal and unethical.
- j. That the complainant is entitled to get refund of the paid amount along with interest from the date of booking/payment to till the date of refund/realization of money.

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

4. The complainant has sought following relief(s):
- Direct the respondent to refund the remaining amount Rs. 1,39,216/- paid by the complainant to the respondent as instalments towards the purchase of residential apartment along with prescribed interest per annum compounded from the date of deposit under section 18 & 19 (4) of RERA.
  - Grant any other relief in favour of the complainants as the Hon'ble Authority may deem fit and proper in the fact and circumstances of the case.
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:
- The complainant being interested in the affordable housing project of the respondent known under the name and style of "AVENUE 51" (the "Project") applied for the allotment of a flat vide application no. 05210 and was consequently allotted unit no. J-607, 6<sup>th</sup> Floor in Tower J, admeasuring 303 sq. ft. ("the Unit") through the draw of lots. Subsequently, allotment letter dated 05.06.2018 was issued to the complainant.
  - The relationship between the parties is contractual in nature therefore, the rights and obligations of the parties are governed by the afore-mentioned 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 of the respondent. Hence, the

A

- complainant agreed to be bound by the terms and conditions of the application form and the allotment letter executed between the parties.
- c. The total sale consideration of the unit as per the allotment letter dated 05.06.2018 is Rs. 12,24,500/- exclusive of any other charges, applicable taxes, cess, levies or assessment. That the complainant only made the payment of Rs. 9,92,534/- and defaulted in making the remaining payment and hence, stood in breach of the agreed terms and conditions.
- d. The complainant failed to fulfil their obligations of payment of the instalments against the total sales consideration of the unit and hence, the complainant cannot be allowed to take benefit of her own wrong and the present complaint is thus liable to be dismissed with costs on this ground alone. 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.
- e. As per the Affordable Housing Policy, 2013 the due date of completion of the project is taken from 4 years after the approval of building plans or date of grant of environment clearance, whichever is later. That the date of approval of building plans of the project is 20.03.2017 and the date of grant of environment clearance is 21.07.2017, hence the due date of offer of possession of the unit shall be calculated from the date of grant of environment clearance, i.e., 21.07.2017. It is imperative to note at this stage that the respondent had timely completed the construction of the

- project and obtained the occupation certificate on 15.03.2021, i.e., before the due date of offer of possession of the unit as per the policy.
- f. At this stage, it is imperative to note that before the date of completion of the unit as per the Affordable Housing Policy, 2013, the complainant surrendered the same vide letter dated 08.08.2020. That the respondent with utter shock and dismay, in his most *bonafide* conduct contacted the complainant in order to know the actual reason for such cancellation but to no avail. The complainant did not pay any heed to such *bonafide* conduct of the respondent and further directed the respondent to cancel the unit of the complainant and refund the total amount paid by them.
- g. After the cancellation/surrender of the unit by the complainant, the respondent, in his most *bonafide* conduct cancelled the unit of the complainant and refunded the total amount paid by the complainant after the lawful deductions as per the Affordable Housing Policy, 2013.
- h. As per the terms and conditions as laid down in the Affordable Housing Policy, 2013, upon the surrender of the unit by the complainant, the respondent is entitled to forfeit an amount of Rs. 25,000/- along with 5% of the total sale consideration of the unit in cases when the surrender is done after 2 years from the commencement of the construction of the project. In the present scenario, the surrender of the unit by the complainant is done almost after 3 years from the commencement of the project and hence, the respondent is entitled to deduct an amount of Rs. 25,000/- along with 5% of the total sale consideration of the unit as per Regulation 4(a) of the notification of the Affordable Housing Policy, 2013 dated 05.07.2019.
- i. It is imperative to note that the applicable taxes, cancellation charges and the deduction of the previous paid taxes from the amount paid and the

- outstanding interest also happens to be the part of the sale consideration. And the respondent is obliged to charge the Goods and Service Tax on the surrender of the flat as such a facility of refund on surrender after reduction of the prescribed charges of Rs. 25,000/- and the 5% of the flat cost is a "supply" of service by the appellant to the respondent wherein the said amount of Rs. 25,000/- and 5% of the flat cost happen to be consideration and Goods and Service tax is chargeable thereon. And the respondent cannot be made to suffer the previously paid taxes by refunding such value to the complainant without any fault of the respondent. For coming to such conclusion reliance is placed on the provisions of Section 7, 9, 15 r/w Section 34 of the Central Goods and Services Tax Act, 2017.
- j. The provisions of the Central Goods and Services Tax Act, 2017 make it clear that there would be a goods and service tax on the supply of services including construction services and also the services occasioned in the surrender of allotment and refund of amount paid whereby the initial agreement for sale of property is being cancelled and hence, an amount of Rs. 1,39,216/- has been deducted and the remaining amount of Rs. 8,53,216/- was refunded to the complainant.
  - k. After the surrender of the unit by the complainant, the complainant foregoes his rights and liabilities with respect to the unit in question as the allotment of the unit stands surrendered and hence, the complainant ceases to be an allottee within the meaning of Section 2(d) of the Act.
  - l. It is categorical to note that after the surrender of the unit by the complainant in the year 2020, the complainant filed the present matter on 02.09.2023, i.e., after over 3 years of surrender. Hence, in accordance with the facts and circumstances noted above, it is most humbly submitted that



the present complaint is barred by limitation as the same has been filed almost after 3 years from the date of surrender of the unit.

m. Hence, the present complaint is liable to be dismissed.

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 based on these undisputed documents and submission made by the parties as well as the written submission of the complainant.

**E. Jurisdiction of the authority**

8. 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. 2021-2022(1) RCR (Civil), 357*** 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*** and 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.1 Direct the respondent to refund the remaining amount Rs. 1,39,216/- paid by the complainant to the respondent as instalments towards the purchase of residential apartment along with prescribed interest per annum compounded from the date of deposit.**

14. The complainant was allotted a unit no. J-607 on 16<sup>th</sup> floor, in tower/block- J, in the project "Avenue-51" by the respondent/builder for a total consideration of Rs.12,24,500/- under the Affordable Group Housing Policy 2013. No buyer's agreement was executed between the parties. The possession of the unit was to be offered with 4 years from approval of building plans (20.03.2017) or from the date of environment clearance (21.07.2017) whichever is later. The due date of possession was calculated from date of approval of environment clearance i.e., 21.07.2017, as per policy, of 2013. The complainant paid a sum of Rs.9,92,543/- out of the total sale. Further, the complainant has placed a letter dated 20.09.2020 on page no. 39 of the complaint which is reproduced as under for a ready reference:

*"Sir, request you to please cancel the above-mentioned flat in GLS Avenue-51. I would need the calculation charges that will be a deduction before this cancellation is processed. I have submitted all the original documents. I would like to receive a GST refund for the entire amount paid till now.*

15. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.04.2019, the relevant provision is reproduced as under:

**Clause 5(iii) (h) of the Affordable Housing Policy**

*"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15*

days. [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: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

*Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots.*

16. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 21.07.2017 is later and hence, the same would be considered as date of commencement of project.
17. Accordingly, the respondent is entitled to forfeit 5% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as



amended by the State Government on 05.07.2019 and the request for surrender is within 3 years from the date of commencement of project.


18. The respondent/promoter is directed to deduct only Rs. 25,000/- with 5% cost of the flat as per the clause 4(a) of the Affordable Housing Policy 2013, as amended by the State Government on 05.07.2019

**G. Directions of the Authority:**

19. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to deduct only Rs. 25,000/- with 5% cost of the flat as per the clause 4(a) of the Affordable Housing Policy 2013.
  - ii. The respondent is directed to refund the balance amount of Rs. 53,093/- to the complainant as the amount of Rs. 8,53,216/- is already refunded.
  - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
20. The complaint stand disposed of.
21. File be consigned to registry.

Dated: 22.08.2024

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram