

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

<b>Complaint no. :</b>	<b>4189 of 2023</b>
<b>Date of Filing Complaint:</b>	<b>03.10.2023</b>
<b>Order reserved on:</b>	<b>10.01.2025</b>
<b>Order pronounced on:</b>	<b>07.03.2025</b>

Priyaneet Sarna

**House No.** – 3/11, Ground Floor, Flat DLF Phase – 1,  
Sikander Pur, Ghosi (68), DLF, QE, Gurugram,  
Haryana

**Present address at:**

House No. 202, Sector 56, Gurugram, Haryana

**Complainant**

Versus

M/s GLS Infratech Pvt. Ltd.

**Regd. office:** 707, 7<sup>th</sup> Floor, JMD Pacific Square,  
Sector-15, Part-II, Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Saurabh (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. No.	Heads	Information
1.	Name and location of the project	"GLS Infratech- Arawali Homes", Sector-4, Gurugram
2.	Project area	13.39 acres
3.	Nature of the project	Affordable group housing
4.	DTCP license no. and validity status	110 of 2014 dated 14.08.2014 valid upto 11.04.2020
5.	Name of the Licensee	GLS Infratech Pvt. Ltd. and Anr.
6.	RERA registered/ not registered and validity status	<b>Registered</b> Registered vide no. 232 of 2017 dated 19.09.2017 Valid up to 13.09.2019 further extended to 12.04.2020
7.	Unit no.	T-8, Tower – 008, 7 <sup>th</sup> floor (Page 18 of complaint)
8.	Unit admeasuring	467 sq. ft. (Page 18 of complaint)
9.	Date of allotment	06.04.2018 (Page 18 of complaint)
10.	Date of flat buyer's agreement	Not executed
11.	Payment plan	Time linked payment plan (Page 21 of complaint)
12.	Total consideration	Rs. 17,31,200/- (Page 21 of complaint)
13.	Total amount paid by the complainant	Rs. 13,49,270/-

		(as admitted by respondent on page 24 of the reply and 9 of complaint)
14.	Possession clause	<b>5.1</b> <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> Read with clause 1.10 wherein it defines the commencement date, it shall mean the date of approval of building plans or date of obtaining the environment clearance for the AGH colony whichever is later. <b>(Emphasis supplied - taken from another file of the same project)</b>
15.	Date of approval of building plans	01.10.2014 (As per page 5 of reply)
16.	Date of environment clearance	12.04.2016 (Page 5 of reply)
17.	Due date of possession	12.10.2020 [Due date of possession calculated from the date of environment clearance i.e., 12.04.2016 plus 6 months grace period allowed]
18.	Occupation certificate	22.05.2020 (Page 5 of reply)
19.	Offer of possession	30.06.2020 (Page 21 of reply)
20.	Date of surrender	08.08.2020 (Page 23 of the reply)

### B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. That complainant vide application 14727 dated 06.04.2018, applied for allotment of a unit in the said project.
- ii. The respondent vide allotment letter 06.04.2018 allotted a residential apartment T8-701 located on 7th floor in Tower 008,

and also allotted two-wheeler parking site admeasuring 0.8m x 2.5 m earmarked in the said project for a total sale consideration of Rs. 17,31,200/- to the complainant.

- iii. That the respondent was obligated to hand over the physical possession of the flat to the purchaser(s) within a period of forty-eight (48) months from the date of commencement of construction. That as per the RERA 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.
- iv. That the complainant has paid an amount of Rs.13,49,270/- towards sale consideration of the said residential apartment till date. That the respondent has violated the provisions of the RERA Act, 2016 by taking more than 10 percent of the total sale consideration without executing apartment buyers agreement interse parties. That the complainant has been in regular contact with respondents representatives for the purpose of knowing the status of the said project.
- v. That the complainant on 8th August 2020 requested the respondent to cancel her allotment and return paid up amount i.e., Rs.13,49,270/-. That the complainant wrote many mails asking for the status for cancellation, but respondent does not reply to the same. That the complainant also had a word with the respondent customer care, executives but they were also of no help.
- vi. That the complainant request for cancellation was submitted on 8 August 2020 and the refund was made on 14<sup>th</sup> June 2021. That only after multiple follow-ups cancelled the said allotment and returned an amount of Rs. 11,48,637/- to the complainant after deduction of Rs. 2,00,633/-. That the deduction done by respondent is illegal

and unethical and is not according to the allotment letter dated 06.04.2018.

- vii. That the above act of deduct of an amount of Rs. 2,00,633/- from the total sale consideration is grossly illegal, capricious, malafide, illogical and against the basic principle of equity and good conscious.
- viii. That even after many requests and telephonic conversation with the respondent does not listen to genuine request of the complainant. The complainant had no other option than to send a legal notice to the respondent for the refund of her paid-up amount, which was never replied back.
- ix. The respondent has failed to abide by the terms of the allotment. The cause of action to file the present complaint is continuing as the respondent has not delivered the possession of the unit till present date. Hence the total amount to be recovered by the respondent is Rs.2,00,633/- along with interest and litigation fees.

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

- 4. The complainant has sought following relief(s):
  - i. Direct the respondent to refund the payment made by the complainant along with interest at the prescribed rate from the date of such payments.

**D. Reply by respondent:**

- 5. The respondent by way of written reply made following submissions:
  - i. 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. 14727 and was consequently allotted Unit no. T8-701, 7<sup>th</sup> Floor in Tower T 008, admeasuring 467 sq. ft. through the



draw of lots. Subsequently, allotment letter dated 06.04.2018 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 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 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. That the respondent is cooperative and transparent throughout as evident from its conduct.
- iii. That it is submitted that the complainant was under an obligation to make timely payments for the unit to the respondent according to the terms and conditions of the allotment letter as well as the real estate (regulatory and development), Act 2016.
- iv. That the total sale consideration of the unit as per the allotment letter dated 06.04.2018 is Rs. 17,31,200/- exclusive of any other development charges (including any future enhancement or addition of EDC), taxes, duties, levies, cess etc., (e.g., GST, VAT, Surcharge, Service Tax etc.,). That the complainant only made the payment of Rs. 13,49,270/- and defaulted in making the remaining payment and hence, stood in breach of the agreed terms and conditions.
- v. That 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.

- vi. That 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 01.10.2014 and the date of grant of environment clearance is 12.04.2016, hence the due date of offer of possession of the unit shall be calculated from the date of grant of environment clearance, i.e., 12.04.2016. Moreover, as per the HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The same has also been upheld by this Ld. Authority in the Complaint bearing no. 3792 of 2020 of the same Project. Hence, the due date of Offer of Possession of the unit comes out to be 12.10.2020. 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 22.05.2020 and had offered the possession of the unit to the complainant on



30.06.2020, i.e., before the due date of offer of possession of the unit as per the policy.

- vii. That after offering the possession of the unit to the complainant on 30.06.2020, the respondent contacted to the complainant in order to know the actual status as to the remittance of outstanding payments and taking of the physical possession by the complainant but instead of taking the possession of the unit, 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.
- viii. That 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.
- ix. That in the present scenario, the surrender of the unit by the complainant is done almost after 4 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.
- x. That the respondent is further liable to pay the interest at the prescribed rate for any delay in payment by the respondent. the



same is even provided for under Section 19(6) & (7) of the Real Estate (Regulation and Development) Act, 2016, and also under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 reiterated above. Such interest liability cannot be effaced in case of surrender of the unit. If that be so, the developer/respondent shall suffer prejudicially and the same shall give a wrongful option to the allottees to withdrawn from the project and avoid late payment charges and on the other hand keep the developer on hold by non-payment of the due payments.

- xi. That, hence, based on the above facts and circumstances, an amount of Rs. 2,00,617.2/- has been deducted and the remaining amount of Rs. 11,48,652.50/- was refunded to the complainant.
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;*

**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.*

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 complainants at a later stage.

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

**F.I Direct the respondent to refund the payments made by the complainant along with interest at the prescribed rate from the date of such payments were made.**

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest 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. The complainant booked a unit in the affordable group housing colony "Arawali Homes" situated at sector 4, Sohna, District- Gurgaon, Haryana and was allotted a unit bearing no. 008 on 7<sup>th</sup> floor in tower- 8 of the project vide allotment letter dated 06.04.2018 for a total sale consideration of Rs.17,31,200/- out of which the complainant had paid an amount of Rs.13,49,270/-.
13. 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. Due date of possession is calculated from the date of environment clearance i.e., 12.04.2016 being later which comes out to be 12.04.2020 plus 6 months 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 be 12.10.2020. The respondent has obtained the occupation certificate on 22.05.2020 and offer the possession of the allotted unit on 30.06.2020. Thereafter the complainant sent a request for the surrender i.e., 08.08.2020.
14. It is pertinent to mention clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 states as under:



*On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

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 years 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;

*Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.*

15. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent/builder is entitled to forfeit the amount in accordance with amended section 5(iii)(h). The date of commencement of project has been defined under clause 5.1 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., 12.04.2016 shall be treated as date of commencement of project being later. Thus, the respondent was bound to cancel the unit and return the amount as per clause 5(iii) (h) of the policy, 2013.
16. The authority observes that complainant is entitled for refund the deposited amount after deduction of the amount as allowed under Affordable Group Housing Policy 2013 and amended in 2019 which allow for deduction of 5% of the consideration money in addition to Rs.25,000/- as the complainant has been seeking refund after making the application even after the offer of possession of the allotted unit on 30.06.2020.

**G. Directions of the Authority:**



17. 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:
- The respondent/promoter is directed to refund the paid-up amount of Rs. 13,49,270/- after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @11.10% per annum from the date surrender/withdraw of allotment i.e., 08.08.2020 till the actual realization of the amount after adjustment of an amount of Rs.11,48,637/- already paid by the respondent to the complainant.
  - 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.
18. Complaint stands disposed of.
19. File be consigned to the registry.

Dated: 07.03.2025

Haryana Real Estate Regulatory Authority, Gurugram

**(Arun Kumar)**  
Chairman