

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.159 of 2023

Date of Decision: January 28, 2025

M/s GLS Infratech Private Limited having its registered office at: 311, 3rd Floor, JMD Pacific Square, Sector 15 Part II, Gurugram, 122001.

Appellant.

Versus

Harish Bhardwaj

H.No. 154, Sector-13, Pocket-B, Metro View Apartments, Dwarka, New Delhi.

Respondent

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)
(Joined through VC)**

Present: Mr. Gaurav Jaglan, Advocate,
for the appellant.

Respondent in person.

ORDER:

JUSTICE RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 20.10.2022 passed by the Authority¹. Operative part thereof reads as under:

- i. "The respondent is hereby directed to refund the excess amount deducted by it over and above 5% of the flat cost in addition to Rs.25,000/- as specified under Clause 5(iii)(h) of Policy along with interest @ 10.35% per annum on the refundable amount from the date of surrender of the unit i.e. 23.07.2019 till the actual realization of the amount.*
- ii. 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."*

2. As per the averments in the complaint, the respondent/allottee was allotted a unit bearing No.E-802, 8th floor,

¹ Haryana Real Estate Regulatory Authority, Gurugram

Tower-E, measuring 640sq.ft. in the project of the appellant namely 'Avenue-51, Sector-92, Gurugram in 2017, under Affordable Housing Policy 2013 for a total sale consideration of Rs. 17,31,200/-. As per clause 8.1 of the draft agreement, all such projects were required to be necessarily completed within 4 years from the approval of the building plans or grant of environmental clearance, whichever was later. The building plans were approved on 20.03.2017 and the environmental clearance was granted on 12.04.2016 and thus the due date of possession was 20.03.2021. However, respondent-allottee refused to sign the Flat Buyer's Agreement' on the plea that it was against the affordable housing policy. As the respondent-allottee did not get any response from the company on clarifications sought by him, he surrendered the unit vide letter dated 23.07.2019 and sought cancellation of the allotment and refund of amount paid along with interest.

3. It was pleaded by the respondent/allottee that he paid an amount of Rs.7,24,501/- against the total sale consideration of Rs. 17,31,200/-. He stated that on surrender of the unit vide letter dated 23.07.2019, the appellant/promoter refunded Rs 3,78,184/- after deduction of cancellation charges which included interest on delay in payment and also taxes. It was contended that the above said deductions were not in accordance with Affordable Housing Policy 2013 issued by the Town and Planning Department under which the unit was allotted to him. Aggrieved with the said deductions, the respondent/allottee filed complaint before the Authority seeking refund of amount paid by him along with interest.

4. The claim was resisted by the appellant by pleading that the appellant was entitled to charge the cancellation charges, outstanding interest, GST, 5% of the flat cost along with statutory

amount of Rs.25,000/- with applicable taxes as cancellation charges according to the Affordable Housing Policy, 2013.

5. The promoter after cancellation of the unit deducted an amount of Rs.3,46,184/- from the total amount of Rs. 7,24,501/- paid by the allottee as per the below mentioned table:

Description	Charges
Cancellation charges	Rs.25,000/-
Tax	Rs.4500/-
Charges of 3% of total cost since cancellation was sought in 2nd year after start of construction	Rs.77,625 /-
18% GST on 3% cancellation	Rs.13,973/-
Interest outstanding upto 23.07.2019	Rs.1,21,584/-
GST of FY 2017-18	Rs.103,502/-
Total deduction	Rs.3,46,184 /-
Amount paid	Rs.7,24,501/-
Refunded amount	Rs.3,78,184/-

6. The learned after considering the pleadings of the parties and appreciating the material on record, passed the impugned order dated 20.10.2022, the relevant part of which is already reproduced above in paragraph no.1 of this order.

7. The appellant has assailed the impugned order on the ground that the deductions made by it are in consonance with Affordable Housing Policy, 2013 and it had not committed any breach of its obligations.

8. Per contra, the respondent/allottee has argued that these deductions from the total amount paid by him, as is being sought by the appellant, are not in accordance with the Affordable Housing Policy 2013 under which the allotment was made to him. He asserted that the impugned order of the learned authority is just and fair and there is no merit in the appeal filed by the appellant and the same may be dismissed.

9. The question for consideration before this Bench is whether the deduction of Rs.3,46,184/-made by the promoter is in accordance with the policy of 2013. To address the said controversy, clause 5(iii) (h) of Affordable Housing Policy 2013 of the Government of Haryana, Town and Country Planning Department, as amended vide notification dated 05.07.2019 is reproduced below:

Clause 5(iii)(h)

“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:

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

10. Since the respondent/ allottee had surrendered the unit on 23.07.2019, therefore the amendment vide notification dated 05.07.2019 to the Affordable Housing Policy 2013 would be applicable. Thus, the appellant can forfeit an amount @ 5% of cost of the flat in addition to Rs.25,000/- from the total amount paid by respondent/ allottee. The appellant has not put forward any logic or reason as to how any deduction over and above what is stipulated in the said policy of 2013 can be allowed. Moreover, we are unable to understand as to how the GST would be applicable on the amount being deducted by the appellant from the total amount paid by the allottee. The appellant has also not given any logic or justification or

reasoning as to how the 'interest accrued till cancellation' is being claimed. In the given set of circumstances, we are not inclined to allow any deduction, more than what is permissible under the above said Affordable Housing Policy 2013 as amended vide notification dated 05.07.2019 by the Government of Haryana, from the total amount paid by the respondent allottee.

11. No other point was urged before us.

12. In view of above, there is no legal infirmity in the order passed by the Authority. Resultantly, the present appeal deserves outright dismissal. Ordered accordingly.

13. No order as to costs.

14. The amount deposited by the appellant/promoter with this Tribunal to comply with the proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, along with interest accrued thereon, be sent to the learned Authority for disbursement to the respondent/allottee subject to tax liability, if any, as per law and rules.

15. A copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

16. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

RakeshManocha
Member (Technical)
(Joined through VC)

January 28, 2025
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