BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM.

Complaint No. 2291 of 2025
Date of Decision: 01.08.2025

1. Rakesh Kumar S/o Manohar Lal Yadav, resident of QTR No. C/301, Delhi Police Quarter, Sector-16C, Dwarka N.S.I.T, South-West Delhi, Delhi-110078,

2. Sabina Yadav W/o Anil Kumar, resident of Atali (37), Mahendragarh, Haryana-123021.

.....Complainants.

Versus

GLS Infraprojects Pvt. Ltd. (through its managing directors and other director), resident of 707, 7th floor, JMD Pacific Square, Sector 15 Part-II, Gurugram.

.....Respondent.

APPEARANCE

For Complainants:	Mr. Nitesh Manchanda, Advocate.
For Respondent:	Mr. Harshit Batra, Advocate.

ORDER

This is a complaint filed by Mr. Rakesh Kumar & Sabina Yadav, (allottees), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) read with Rule 29 of The Haryana Real Estate (Regulation

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and Development) Rules, 2017 against GLS Infraprojects Pvt. Ltd. (promoter/ developer).

2. According to complainants, they are respectable & law-abiding citizens of India. The respondent is a Private Ltd. company, incorporated under The Companies Act, 1956, engaged in business of providing real estate services and is a promoter u/s 2 (zk) of Act of 2016.

3. The respondent advertised about its new affordable plotted colony namely 'Avenue City' located at village Wazirpur, Sector-92, Gurugram. The respondent painted a Rozy picture of its project in its advertisements. Believing the false assurance and misleading representations of the respondent company in its advertisements and relying upon the good-will of the respondent company, they (complainants) jointly applied for booking of a residential plot in its (respondent's) afore-said project. The respondent issued an allotment letter dated 16.12.2023 and allotted a plot bearing no. 11 admeasuring 138.362 sq. yards, for a total sale consideration of Rs.96,85,340/-.

4. That on 12.01.2024, an already typed 'agreement for sale' was entered into between the parties. The respondent vide letter dated 07.11.2024 offered possession of the plot/unit to

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them (complainants). Through said letter dated 07.11.2024 the respondent issued a final statement of account and raised arbitrary demands, including Rs.58,11,204/- as remaining balance payment of sale consideration, Rs.69,181/- under the head 'Interest Bearing Maintenance Security (IBMS)' and Rs.1,37,144/- under the head 'Maintenance/Operation & Service Charges (2 years in advance) which were to be paid within 30 days. The demand was raised by the respondent without completing the construction work as assured by it and against the norms of Act of 2016 and Agreement for Sale.

5. That the respondent sent a draft of a maintenance agreement, involving M/s Sarovdaya Facility Management Pvt. Ltd. and both of parties. Terms and conditions contained in the proposed maintenance agreement are arbitrary, one-sided and not in consonance with the terms of the agreement for sale.

6. That they (complainants) have already paid an amount of Rs.1,37,144/- towards maintenance/operation and service charges for a period of two years in advance. The said charges should be adjusted from the date of execution of conveyance deed. The said demand is unjustified, arbitrary and

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causing further financial burden on the complainants, without any legal basis.

7. That the respondent has also sent a 'No Objection Cum Undertaking' to the complainants which is to be signed by them (complainants) separately. The respondent is persistently pressurizing them to sign the same. However, several clauses in the said 'No Objection Cum Undertaking' and the Maintenance Agreement are arbitrary, one-sided and contrary to the terms of the agreement for sale a well as the statutory provisions under the Act of 2016.

8. Citing facts as described above, the complainants have sought following reliefs: -

i. To direct the respondent to pay compensation of Rs.4,00,000/- for raising illegal and arbitrary demands for IBMS of Rs.69,181/- and 2 years advance maintenance charges of Rs.1,37,144/- at the time of offer of possession.

ii. To direct the respondent to pay compensation of Rs.5,00,000/- for raising pre mature demand of Rs.58,11,204/- without completion of the projects as per the norms of the RERA Act and the agreement for sale.

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iii. To direct the respondent to pay compensation of Rs.5,00,000/- for mental harassment and agony faced by the complainants.

iv. To direct the respondent to pay compensation of Rs.75,000/- as litigation costs incurred by the complainants to seek redressal of their rights.

v. To direct the respondent to remove/delete/alter, arbitrary clauses mentioned in the Maintenance Agreement and in the No Objection Cum Undertaking.

vi. Any other relief which the Hon'ble Adjudicating Officer may deem fit in the present case.

9. The respondent contested the claim of complainants by filing a written reply. The respondent utterly denied all the averments made and contentions raised by the complainants, in the present complaint alleging the same as fallacious, unfounded, baseless, vexatious and contrary to the facts of the present matter. It is further averred that the conveyance deed has already been executed and all claims between the parties have been satisfied. The project has been granted completion certificate before due date of possession and has all amenities and services are available.

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10. It is claimed by the respondent that no compensation can be allowed to an allottee, who intends to stay in the project. Only delay possession charges can be claimed under the Real Estates (Regulations and Development) Act, 2016.

11. The respondent stated further that Ld. Adjudicating Officer does not have the jurisdiction to quash the charges and to adjudicate upon execution of maintenance agreement. That no compensation for any alleged violation of section 12, 14, 18 or 19 of the Act has been sought by the complainants. That the Act of 2016 does not support the claim of compensation for alleged mental/physical harassment. The claim for litigation charges is excessive, bogus and should be dismissed. That the claims of the complainants are unsubstantiated and should be dismissed (without prejudice).

12. Contending all this, the respondent prayed to dismiss the complaint.

13. Both parties filed affidavits in support of their claims.

14. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

15. Factual matrix of case, as claimed by the complainants i.e. allotment of unit i.e. plot bearing No. 11 measuring 138.362 sq.

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yards in the project developed by respondent, payments made by the complainants, offer of the possession etc did not remain in dispute, during deliberations. Only contentions raised by learned counsel for respondent are –

(i) when conveyance deed has already been executed between the parties and all claims have been satisfied, an allottee i.e. complainant cannot file any complaint seeking compensation and further,

(ii) no compensation can be claimed by an allottee, who intends to stay in the project. The only relief, which an allottee can claim, is 'delayed possession charges' under the Act of 2016.

16. Admittedly, conveyance deed has already been executed between the parties. The complainants claimed that along with offer of possession, respondent raised arbitrary demands under the Head 'Interest Bearing Maintenance Security' (IBMS) and under the head 'Maintenance/Operation & Service Charges (two years in advance) of maintenance agreement involving some third party i.e. M/s. Sarvodaya Facility Management Private Limited and again that same were forced to execute a "No Objection-cum-Undertaking". It is also allegation of complainants that certain facilities are not provided by the

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respondent, as agreed under the agreement. If claim of the complainants is taken as true at this stage, I am unable to find any provision of law, which debars the complainants, claiming compensation for reasons mentioned above, even if conveyance deed has been executed.

17. The respondent in its plea (in affidavit filed in evidence) has relied upon orders passed by the Authority in complaints i.e. titled as ***'Renu Garg vs Pioneer Urban Land & Infrastructure Limited, Complaint No. 3189 of 2019 dated 12.03.2020***. It was held that after the execution of conveyance deed and after having taken the vacant and peaceful possession of the unit, the parties have entered into a settlement and thereafter, no claim persists. In complaint ***Swati Jain vs BPTP Pvt Ltd, Complaint No. 744 of 2019 dated 27.07.2021***, where the Authority gave following order:

> *"Now at this stage, he (complainant) cannot be allowed to open a concluded contract. At this stage, the complainant cannot go back in time and claim quashing of demand notice dated 14.03.2018. As of today, contractual obligations between the parties stands discharged. Accordingly, the disputes arising between them in respect to relief of delay interest and quashing of offer of possession along with refund of excess amount cannot be entertained by this Authority. Hence, these complaints are dismissed."*

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18. Respondent referred another order passed in a complaint decided by ***Real Estate Regulatory Authority, Panchkula titled as Rajesh Goyal v Ansal Housing and Construction Pvt Ltd and ors, complaint No. 434 of 2019 dated 03.11.2020***, *the Authority observed that "relationship of promoter-allottee between the parties had come to an end on execution of the conveyance deed".*

19. On the other hand, complainants cited an order passed in case titled as ***Varun Gupta vs M/s. EMAAR MGF complaint no. 4031 of 2019,*** where Real Estate Regulatory Authority, Gurugram observed that "*the execution of a conveyance deed does not conclude the relationship or the marks an end to the liabilities and obligations of the promoter towards the said unit, whereby the right, title and interest has been transferred in the name of the allottee on execution of conveyance deed".*

20. Firstly, any order passed by the Authority is not a binding precedent, like order of Higher Court. Further, the facts of the present case are different from cases relied upon by the respondent. For example, in ***Renu Garg's case (supra),*** parties had entered into a settlement agreement, apart from execution of

conveyance deed, which is not true in this case. There is no settlement agreement between the parties.

21. I am unable to find any provision in the Act of 2016, where an allotee is debarred from claiming any compensation from the promoter, after conveyance deed is executed between the parties. Section 17 of the Act of 2016 simply provides for execution of registered conveyance deed, in favour of the allottee, along with undivided proportionate title in the common areas to the association of allottees or the competent authority, as the case may be. If claim of the complainants is taken as true, same were forced to make payment of illegal demands, otherwise threatened to cancel the unit. In such a circumstance, even if conveyance deed has been executed, doors cannot be shut upon an allottee to claim compensation, if his/her claim is otherwise admissible.

22. So far as the other plea of respondent that no complaint seeking compensation can be allowed, when allottee intends to stay in the project, is concerned, perhaps the respondent took this plea keeping in mind provision of section 18 (1) of the Act, which provides for return of the amount paid by allottee, when promoter failed to complete or unable to give

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possession of an apartment, plot or building in accordance with term of agreement, and allottee demands for refund of amount.

23. Trite it to mention here that complainants are not seeking return of amounts, paid by them rather accepted possession of their plot offered by respondent. I find no weight in this submission of learned counsel. The respondent raised arbitrary demands, which are not in accordance with the terms and conditions of agreement for sale. According to Section 18 (3) of Act of 2016, if promoter fails to discharge any other obligations (obligations other than prescribed in sub section 1 of section 18) imposed on him under this Act or the rules or regulations made thereunder ***or in accordance with the terms and conditions of the agreement for sale***, he shall be liable to pay compensation to the allottees.....

24. It is submitted by the complainant (Sh. Rakesh Kumar) that they received offer of possession dated 07.11.2024. The respondent raised certain demands which they were not liable to pay. Copy of offer of possession as well as copy of statement of account, have been put on file. Genuineness of these documents was not disputed on behalf of respondent. They were

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forced to pay a sum of Rs.69,181/- as Interest Bearing Maintenance Security and again a sum of Rs.1,37,144/- for Maintenance/Operation & Services charges for two years in advance, while they never agreed to pay any such amount through BBA. Complainant claims that when he requested to waive said charges, he was threatened by representative of respondent for cancellation of his plot.

25. Letter, offering possession dated 07.11.2024 is an offer of possession subject to certain conditions It requires the allottees/complainants to pay the amount alleged to be balance instalment and other charges detailed in Annexure-A. Annexure-A is final statement of account mentioned above. Learned counsel for respondent failed to show anything where allottee had agreed to pay Interest Bearing Maintenance Security or Maintenance/Operation & Services charges by the Maintaining Agency amounting Rs.69,181/- and Rs.1,37,144/- respectively. In this way, respondent compelled the complainants to pay these amounts threatening to cancel the unit which complainants were not legally obliged to pay.

26. Further, through aforesaid letter offering possession, the respondent demanded execution of maintenance

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agreement/operation and services agreement on stamp paper of Rs.100/- in favour of a Maintenance Agency M/s Sarvodaya Facility Management Pvt. Ltd. which complainants claim to be a proxy of respondent (GLS Infra-projects Pvt. Ltd.). The complainants cited following terms of maintenance agreement draft, which has been put on file as Annexure-C6, alleging the same as against their interest: -

(i) *2.1 Subject to timely payment of the Maintenance Charges..... Facility Operator may in its sole discretion appoint outside agencies/sub-contractor for providing some or all the Services under this Agreement.*

(ii) *7.4 In case the Buyer defaults/delays payment of the Maintenance Charges..... the Facility Operator shall be entitled to charge and the Buyer shall be liable to pay interest @ 12% per annum.....*

(iii) *7.8 The payment of bills shall not be withheld or delayed by the Buyer if there is any difference or dispute as to the accuracy of the amount involved.....*

(iv) *7.12 That the Buyer agrees and understands that the Facility Operator shall have the right to increase, revise or modify charges of any services as necessary to ensure quality services.*

(v) *9. a) The Facility Operator may provide some or all of the Services through outside agencies/sub-contractor. In such cases, the responsibility of the Facility Operator shall be limited only to the extent of supervision of these agencies and to ensure that their operation is in conformity with the understanding agreed with these agencies. The Facility Operator shall not be directly or indirectly liable for any failures, negligence or acts or omissions of such agencies/sub-contractor or on account*

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of any damage, injury, accident, fault caused by the act or omission of such agencies/sub-contractor.

(vi) *9. e) The Buyer acknowledges that the Company is not responsible for any default or deficiency in performance of any of the Services by the Facility Operator.....*

(vii) *9. f) Notwithstanding anything to the contrary contained ..... the Facility Operator shall, subject to applicable laws, have the right to monetize the common areas in the project, and the Company and the Facility Operator, as the case may be, shall have the right to decide the costs, price and revenue share, charges etc. to be charges from the interested parties/external Vendors.....*

(viii) 10.c) The relationship between the Company and the Facility Operator is on principal-to-principal basis. The Facility Operator is not an agent or representative of the Company.

27. A perusal of this agreement leavs no doubt in coming to conclusion that same was one-sided and oppressive to the allottees. Moreover, it was against the tenets of law. Section 11 (4) (e) of Act of 2016 cast a duty upon a promoter to enable the formation of an association or society or co-operative society, as the case may be, of the allotees, or a federation of the same, under the laws applicable. In the absence of local laws, such associated is to be formed within a period of three months. Despite making efforts to form such an association or society, the respondent forced the allottees to enter into a maintenance agreement with some agency, alleged to be its own proxy. Even otherwise, terms

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of agreement which the respondent forced upon the allottees are apparently against the interest of allottees. Neither the promoter nor maintaining agency owes any liability in case of any default in services. Moreover, free hand is given to maintaining agency to charge any amount from the allottees or even to hire some sub-contractor, without consent or consultation with the allottees. All this is contrary to law and not binding upon allottees.

28. Similarly, the promoter asked the allottees to submit a No Objection-cum- Undertaking, copy of which is filed as Annexure-C7. If same is allowed to be executed, the developer will have unfettered right to change the layout plan of the complex without requiring any consent from the allotees. The allottees are required to give undertaking that same will not object right of promoter to change layout plan. All this is in teeth with provision of Section 14 (2) (i) of the Act, which prohibits the promoter from making any addition or alteration in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein, without previous consent of the allottees. Through said no objection-cum-undertaking the promoter forced the allottees to give undertaking stating that

same were completely satisfied with the construction and development of the plot and again that same will not claim at present or in future, delayed possession charges or compensation under The Real Estate (Regulation and Development) Act of 2016. It is well settled law that by an agreement a party cannot be restrained from approaching the Court for legal remedies, provided to the same by law.

29. The complainant took me through the BBA, copy of which is put on file where there was no agreement between the parties to levy such charges as described above or to give any such undertaking or to enter into a maintenance agreement, with some maintaining agency, chosen by the promoter on its own. The promoter has apparently violated the terms of agreement for sale and hence liable to compensate the allottees i.e. complainants.

30. The complainants have prayed for a sum of Rs.4 lacs for raising illegal and arbitrary demands for IBMS and 2 years maintenance charges. Apparently the allottees/complainants were compelled to pay the amounts which they were not otherwise liable to pay. Further, the promoter/respondent was used money paid by the complainants for unfair advantage. On the

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other hand, complainants suffered loss. It is pointed out by the complainant (Rakesh Kumar) that they were forced to take loan to pay that amount. Complainants are stated to have already paid Rs.69,181/- and Rs.1,37,144/- for IBMS and two years maintenance charges in advance. The complainants are allowed a sum of Rs.4 lacs (including said amount of Rs.69,181/- and Rs.1,37,144/-) as compensation on this account, to be paid by the respondent.

31. The complainants have prayed a sum of Rs.5 lacs as compensation for raising pre-mature demand without completion of the project. Complainants have filed certain photographs clicked with a copy of Hindustan Times dated 17.11.2024. It is claimed that the unit of the complainants was not complete, even on this date i.e. 17.11.2024.

32. It is not disputed that respondent had received a completion certificate from competent authority which prima facie shows that project was complete till this date. Despite all this, it is not denied that proper boundary wall has not been constructed. Rather, a temporary structure stated to be of blocks 2-3 inches deep is fixed. Complainants could not show any term of

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agreement, where the promoter was obliged to erect boundary wall of a particular specification. Request for compensation in this regard is thus declined.

33. Complainants have further prayed for a compensation of Rs.5 lacs for mental harassment and agony faced by them at the hands of respondent. When complainants were forced to pay illegal demands, to submit an undertaking which same were not legally bound to submit and again to pay advance maintenance charges in favour of some maintaining agency, without making any attempt to form an association of allottees. All this apparently caused mental harassment and agony to the allottees Rs. Five lacs for mental harassment, appears to be excessive. Same are allowed a sum of Rs. 1 lacs in this regard to be paid by the respondent.

34. The complainants requested for Rs.75,000/- as compensation for litigation costs, incurred by them. The complainants are represented by an Advocate in trial of this case. Same are allowed Rs.75,000/- as litigation costs, to be paid by the respondent.

35. This complaint is thus disposed of. The respondent is directed to pay aforesaid amounts of the compensation to the

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complainant in equal proportion along with interest at rate of 10% per annum from the date of this order till realization of amount.

36. File be consigned to the record room.

Announced in open court today i.e. on 01.08.2025.

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram. 01.08.25