

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

Complaint no. : 5309 of 2023
Date of decision: 04.07.2024

Neetu Kumari Sharma & Pawan Kumar
R/O: H.No. 5439, Yadav Market, DLF
Phase-iv, Gurugram

Complainants

Versus

M/s GLS Infratech Pvt. Ltd.
Regd. office: 707, 7th Floor, JMD Pacific Square,
Sector-15, Part-II, Gurgaon, Haryana

Respondent**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Sh. Ankush Janghu (Advocate)

Complainants

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. N.	Particulars	Details
1.	Name and location of the project	"Arawali Homes" at village Khaika & Sohna, sector 4, Sohna, District-Gurgaon, Haryana
2.	Nature of the project	Affordable Housing Colony
3.	Project area	10 acres
4.	DTCP license no.	110 of 2014 dated 14.08.2014 valid up to 11.04.2020
5.	Name of licensee	G.L.S Infratech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 05 of 2020 dated 20.01.2020 valid up to 07.03.2024
7.	Date of approval of building plans	01.10.2014
8.	Date of receipt of environment clearance	12.04.2016
9.	Unit no.	T1-607, Floor-6 th , Tower-001
10.	Unit area admeasuring	476 sq. ft. (carpet area)
11.	Allotment letter	06.04.2018 (As on page no. 12 of the complaint)
12.	Date of flat buyer agreement	22.05.2018 (as on page no. 13 of the complaint)
13.	Due date of possession	12.10.2020 [Note: - Calculated from date of approval of building plan sanction + 6 months on account of covid]
14.	Total sale consideration	Rs.19,62,811/- (As on page no. 52 of the complaint)
15.	Amount paid by the complainant	Rs.15,93,714/- (As per customer ledger on page no. 52 of complaint)
16.	Reminder letters	27.07.2018, 05.03.2019, 19.06.2019, 07.10.2019
17.	Final reminder	28.12.2020 (As on page no. 72 of complaint)
18.	Occupation certificate	22.05.2020 (as per page 62 of reply)
19.	Offer of possession	25.09.2020

		(as per page 65 of reply)
20.	Cancellation letter	05.01.2022
		(As on page no. 78 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. That the respondent is working in field of construction and development of residential as well as commercial projects across the country with the name of "GLS Infratech Private Limited". That the subject matter of the present complaint i.e., the real estate project named "ARAWALI HOMES-2" is situated at Damdama Lake Road, Village-Khaika, Sector-4, Sohna, District-Gurugram, Haryana.
- ii. That in 2021, the respondent through its marketing executives and advertisement approached the complainant with an offer to buy apartment in the proposed project. The respondent assured the complainant that the all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification has been already obtained.
- iii. Relying upon those assurances and believing them to be true, the complainant booked a residential apartment bearing no. T1-607, located on 6th Floor, in Tower-001 admeasuring 476 sq. ft. Thereafter upon multiple requests of the complainant, the respondent issued allotment letter dated 06.04.2018 in favor of the complainant for the aforesaid apartment.

- iv. That the respondent thereafter kept on delaying the execution of the apartment buyer's agreement on one pretext or other and did not execute it despite various requests of the complainant without giving any satisfactory reason.
- v. That from the date of booking the respondent raised various demands for the payment of instalments on the complainants towards the sale consideration of the said apartment and the complainants duly paid all those demands on their part. That the complainants as on today had paid Rs. 15,93,714/- towards the sale consideration as on today to the respondent.
- vi. That the complainants took house loan from India bulls housing finance limited of amount Rs 12,0000/- and got loan sanction letter dated on 13 July 2018.
- vii. That the respondent received the payments from the complainants and allotted the said units to them with a promise to deliver the possession as per the date and timelines mentioned, the respondent has failed to fulfil their obligations bestowed upon them by the contract as well the law and the complainants are still awaiting for the legal and valid possession of their apartment despite payment of the majority of the sale consideration and expiry of promised date of delivery.
- viii. That the conduct on the part of the respondent has cleared the dust on the fact that all the promises made by the respondent at the time of sale of said apartment were fake and false. The respondent had

made all those false, fake, wrongful and fraudulent promises just to induce the complainant(s) to buy the said residential apartments basis its false and frivolous promises, which the respondent never intended to fulfill.

- ix. That the complainants are facing all kind of financial burdens and hardship from their limited income resources, only because of the respondent's failure to fulfill their promises and commitments. Failure of commitment on the part of respondents have made the complainant(s) to suffer grave, severe and immense mental and financial harassment with no-fault on their part.
- x. That the cause of action accrued in favor of the complainant(s) and against the respondent, when the said apartment was booked by the complainants and thereafter on when the allotment letter was issued for the said apartment and on the promised date of the delivery of possession of the said apartment and the cause of action is still continuing as the respondents have failed to handover the actual legal possession of said apartments and executed the conveyance deed till today and also failed to pay the delay possession charges as per law to the complainants despite repeated requests, reminders and promises.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i Direct the respondent to give possession of the said apartment to the complainants.

ii Direct the respondent to give delay possession charges.

D. Reply by respondent:

5. The respondent has made following submissions:

- i. That the complainant no. 1 being interested in the affordable housing project of the respondent known under the name and style of "ARAWALI HOMES" situated at Damadama Lake Road, village Khaika, Sector-4, Sohna, Gurugram, Haryana applied for the allotment of a flat vide application no. 11063 and was consequently allotted unit no. T1-607, 6th floor in tower 001, admeasuring 476 sq. ft. vide allotment letter dated 06.04.2018.
- ii. That after the allotment of the said unit in favour of the complainant no. 1, a builder buyer agreement dated 22.05.2018 was also executed between the parties. It is also pertinent to mention that the builder buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- iii. It is submitted that the complainant no. 1 was responsible to make timely payments not only with respect to the allotment letter. The relevant clauses are reiterated hereunder:

"ALLOTMENT LETTER

"It is clearly agreed to and understood by you that it shall not be obligatory upon the Company to send intimation or demand notices/reminders regarding the payments to be made by you as per the Schedule of payments or obligations to be performed by you. It is hereby expressly and unconditionally accepted and agreed to by you that time is of essence with respect to your obligation to make any and all payments hereunder including the payment of any part of Total Price, payment of any and all other applicable charges, considerations, interest, deposits, penalties and other payments....."

- iv. It is submitted that the total sale consideration of the unit as per the allotment letter dated 06.04.2018 is Rs. 17,63,600/- exclusive of any other charges, applicable taxes, cess, levies or assessment. That the complainant no. 1 has only made the payment of Rs. 15,26,266/- towards the total sale consideration of the unit.
- v. That the complainant no. 1 cannot be allowed to take benefit of her own wrong and the present complaint is thus liable to be dismissed on this ground alone. The Hon'ble Supreme Court noted in case titled "*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 despite the bonafide and transparent conduct of the respondent, complainant no. 1 failed to fulfil her obligations. Despite several reminders being sent to the complainant no. 1, complainant no. 1 failed to make the requisite payments and take possession of the unit and did not come forward to pay their dues or take possession. Consequently, due to the failure of the complainant no. 1 in remitting the outstanding dues and taking the possession of the unit, the respondent was left with no other option but to cancel the allotment of the unit to complainant no. 1 and hence the unit of the complainant no. 1 was cancelled vide cancellation letter dated 05.01.2022.
- vii. That after the cancellation of the allotted unit, there exists no subsisting contractual relationship between the parties and the complainant no. 1 thereby has no rights or titles on such unit. That, at this stage, it is imperative to note that the respondent, in his most

bonafide conduct cancelled the allotment of the unit to complainant no. 1 and refunded the total amount paid by the complainant no. 1 after the lawful deductions.

- viii. That as per the terms and conditions laid down in the Affordable Housing Policy, 2013, 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 unit is cancelled after 2 years from the commencement of the construction of the project.
- ix. Moreover, the respondent is also entitled to forfeit the statutory dues liked as held by the Hon'ble Haryana Real Estate Appellate Tribunal in *Ravinder Pal Singh v Emaar MGF land Ltd. Appeal No.255 of 2019* allowed the forfeiture of earnest money along with "the statutory dues already deposited with the government". Accordingly, the respondent is also entitled to deduct the statutory dues like GST from the amount to refunded after forfeiture
- x. At this stage, it is imperative to note that the complainants had also taken a loan from India bulls Housing Finance Limited and hence, while cancelling the allotment of the unit of the complainant no. 1, the respondent, primarily paid an amount of Rs. 11,15,349/- to the India bulls Housing Finance Limited and then made the remaining payment to the complainant no. 1.
- xi. That after the cancellation of the unit by the respondent, the complainant no. 1 is left with no rights and liabilities with respect to the unit in question as the allotment of the unit stands cancelled and hence, the complainant no. 1 ceases to be an allottee.
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;

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 complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.I. Direct the respondent to give possession of the said apartment to the complainants.

F. II. Direct the respondent to give delay possession charges.

11. In the present complaint, the complainants intend to continue with the project and is seeking possession of the unit 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. Clause 5 of the application form provides the time period of handing over possession and the same is reproduced below:

"5. POSSESSION

5.1 Subject to the grant of occupation certificate by the competent governmental authority and other situations beyond the reasonable control of the Company including force majeure conditions or any judicial/quasi-judicial/administrative orders/directions or administrative acts or omissions or administrative delays and subject to the Applicant performing all of his/her obligations under the terms of this Application or the Apartment Buyer's Agreement, the Company shall endeavour to handover the possession of the Apartment within a period of 4 (four) years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later. Company shall be entitled to extension of time for any delay caused on account of any of the aforesaid reasons and no action shall lie against the Company or any of its directors, employees, shareholders or affiliates on this account. For the

avoidance of doubt, force majeure conditions shall include acts of god, terrorism, shortage of energy, labour, equipment, facilities, material or supplies, failure of transportation, strike, lock-outs, action of labour union, change of law, any order or direction from any court, tribunal or authority or any administrative acts or omissions or administrative delays, etc.,

[Emphasis supplied]

13. The complainants booked a unit in the affordable group housing colony project of the respondent known as "Arawali Homes" situated at Damdama Lake Road, Village-Khaika, Sector-4, Sohna, Haryana and was allotted a unit bearing no. T001-607, on 6th floor in tower- 001 of the project vide buyers agreement dated 22.05.2018 for a total sale consideration of Rs.19,62,811/- out of which the complainants had paid an amount of Rs.15,93,714/-.
14. The respondent vides reminder/demand letters dated 27.07.2018, 05.03.2019, 19.06.2019, 07.10.2019 and final reminder letter dated 28.12.2020 intimated the complainants for payment of the outstanding dues but she failed to adhere the same. It is observed that the complainants failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 05.01.2022.
15. It is observed that the complainants failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 05.01.2022. In line with the aforesaid facts, the documents and submissions placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
16. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of **Rs.25,000/-** may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*

17. However, in the present case, the respondent /builder issued reminders and a final reminder on 28.12.2020 to the complainants. But on the failure of the complainants in making payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit. Now, on the failure of the respondent to publish a list of defaulters in the daily Hindi newspaper. The authority is of the considered view that the respondent /builder has not followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 05.01.2022 is held to be invalid. The respondent is directed to reinstate the allotted unit of the complainants as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainants within a period of 60 days from the date of this order.
18. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. 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. The environmental clearance was received later i.e., 12.04.2016, so it will be taken into account and 4 years will be calculated from 12.04.2016 which comes out to be 12.04.2020. Further, a period of 6 months will also be added to this 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 obtained the Occupation Certificate from the competent authority on 22.05.2020 and offered possession of the allotted unit to the complainants on 25.09.2020 i.e., before the due date of handing over of possession.

19. Accordingly, no delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement executed between the parties is established. Therefore, no case of delay possession charges payable under section 18 of the Act, 2016 is made out.
20. Further, the complainants/allottees is obligated to take possession of the subject unit within 2 months from the date of valid offer of possession after receipt of occupation certificate from the competent Authority in terms of Section 19(10) of the Act, 2016.

H. Directions of the Authority:

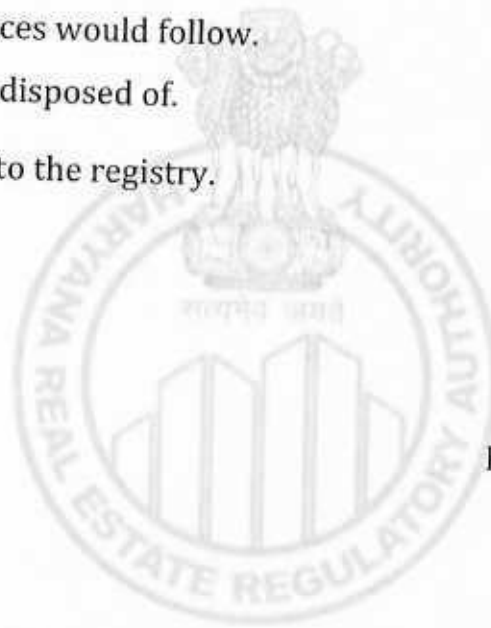
21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The cancellation letter dated 05.01.2022 is hereby set aside. The respondent is directed to re instate the allotted unit of the

complainants as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainants within a period of 60 days from the date of this order.

- ii. The complainants are directed to pay the outstanding dues, if any at the prescribed rate i.e., 11.10% by the respondent/promoter.
 - iii. 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.
22. Complaint stands disposed of.
23. File be consigned to the registry.

Dated: 04.07.2025




(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM