

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

Complaint no.: 415 of 2023
First Date of Hearing: 28.04.2023
Date of Decision: 26.10.2023

Sh. Swarn Kumar Saha
R/o: - House no.-209, E/16 D Nai Basti,
Partap Nagar, Gurugram-122001

Complainant

Versus

M/s Mahira Buildtech Private Limited.
Regd. Office at: 302-A, Global Foyer,
Sector-43, Golf Course Road, Gurugram-
122009
Corporate Office at: - 302-A, Global Foyer,
Sector-43, Golf Course Road, Gurugram-
122009

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Swarn Kumar Saha
None

Complainant-in-person
Respondent

ORDER

1. The present complaint dated 02.02.2023 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Mahira Homes" at sector 103, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	5.4037 acres
4.	DTCP license no.	31 of 2019 dated 01.03.2019 valid up to 28.02.2024
5.	RERA Registered/ not registered	Registered vide no. 15 of 2019 dated 01.04.2019 valid up to 28.02.2023
6.	Unit no.	1304, Tower-D (As per page no. 6 of the complaint)
7.	Unit area admeasuring	570 sq. ft. (Carpet area) (As per page no. 6 of the complaint)
8.	Date of allotment	N.A
9.	Date of building plan approval	29.03.2019 (As per information provided by planning branch)
10.	Environmental clearance dated	29.01.2020 (As per information provided by planning branch)
11.	Possession clause (Taken from another project of affordable group housing)	5.1. HANDING OVER OF POSSESSION 5.1.1 Subject to Clause 12 herein or any other circumstances not anticipated and beyond the control of the developer or any restraints/restrictions from any courts/Authorities but subject to the

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		<i>purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this agreement including but not limited to timely payment of the total price and having complied with all provisions, formalities, documentations, etc., as prescribed by the developer, the developer proposes to offer the handing over the physical possession of the flat to the purchaser(s) within a period of forty-eight(48) months from the commencement date.</i>
12.	Due date of possession	29.01.2024 [Due date of possession calculated from the date of environmental clearance dated 29.01.2020]
13.	Total sale consideration	N.A
14.	Amount paid by the complainant	Rs. 11,76,650/- (As per bank letter on page no. 13 of the complaint)
15.	Occupation certificate	N/A
16.	Offer of possession	Not offered
17.	Cancellation application	05.02.2022
18.	Tripartite Agreement	29.07.2019 (As per bank letter on page no. 13 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. The respondent published very attractive brochure of Affordable Group Housing Colony called '**Mahira Homes**' at Sector - 103, Gurugram, Haryana. The project was launched in 2019 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.

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- ii. That based on the various representations made by the respondent, the complainant booked a unit no. 1304, tower-D admeasuring 570 sq. ft. in the project of the respondent by paying an amount of Rs.1,15,000/- as booking amount on 05.04.2019.
- iii. A Tripartite Agreement was executed between the complainant, the respondent and Canara Bank on 29.07.2019 for obtaining a housing loan towards payment of total sale consideration.
- iv. The complainant further paid Rs.4,73,326/- on 30.07.2019, Rs.2,94,162/- on 05.03.2020 and Rs.2,94,162/- on 07.10.2020 as per the letter dated 02.03.2022 issued by the bank.
- v. The complainant sent a letter dated 05.02.2022 to the respondent for cancellation of booking stating that he would not be able to continue the said booking in the project of the respondent due to some other financial commitments.
- vi. That the complainant has approached the Authority seeking refund of their paid amount with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondent to refund the paid-up amount along with interest at the prescribed rate.
5. The authority issued a notice dated 03.02.2023 to the respondent by speed post and also on the given email address at gurgaon@mahiragroup.com and refund@mahiragroup.com for filing of reply and putting up appearance on the date fixed for hearing. The delivery reports have been placed in the file. Despite given ample opportunities vide hearings dated 28.04.2023, 28.07.2023 and 29.09.2023 the counsel for the respondent neither put in appearance



nor did not file any reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent along with the cost of Rs.5,000/- and decide the complaint on the basis of facts submitted by the complainants which are not disputed.

D. Jurisdiction of the Authority:

6. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

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.

D. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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.

7. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022 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."

8. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and***



Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra), the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

E. Entitlement of the complainant for refund:

E.I Direct to the respondent to refund an amount of Rs. 11,76,650/- along with interest.

9. The complainant booked a unit in the project of respondent "Mahira Homes", in Sector 103, Gurugram in 2019 and paid a booking amount of Rs.1,15,000/- on 05.04.2019. Though no buyer's agreement was executed between the parties, but the complainant started paying the amount due against the booked unit and paid a total sum of Rs. 11,76,650/-.
10. The due date of possession is to be calculated 48 months from the date of environment clearance i.e., 29.01.2020 which comes out to be 29.01.2024 as per the possession clause of another project of affordable group housing.
11. The complainant vide order dated 26.10.2023 has brought to the attention of the authority that there is no progress at site till date and request for cancellation of application made on 05.02.2022 has been duly received by the promoter-company including all the documents but till date no amount has been refunded neither to the complainant nor to the bank.
12. The project was registered on 01.04.2019 and valid up to 28.02.2023. The authority has gone through the possession clause of the agreement of another project of affordable group housing and observed that the

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respondent-developer proposes to handover the possession of the booked unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 29.03.2019 and date of environment clearance is 29.01.2020 as per information provided by the planning branch. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 29.01.2024. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The completion date of the aforesaid project in which the subject unit is being booked by the complainant is 29.01.2024 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **29.07.2024.**

13. Now when the complainant approached the Authority to seek refund, the respondent already clarified their stance that the complainant is entitled to refund as per clause 5(iii)(h) of Affordable Housing Policy, 2013 in case of surrender of flat by any successful allottee, the amount of Rs.25,000/- can be forfeited in addition to the following:

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

	commencement of project	
(dd)	After 2 year from the date of commencement of project	5% of the cost of flat

14. Since the complainant has applied for cancellation on 05.02.2022 i.e., after 2 years from the commencement of the project i.e., 29.01.2020(date of EC). Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per Clause 5(iii)(h) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/ plus 5 % of the cost of the flat .
15. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
16. The authority hereby directs the promoter to return the amount received by him i.e., Rs.11,76,650/- after deducting the amount of Rs.25,000/- plus 5% of the cost of the flat along as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender date 05.02.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. Directions of the authority:

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	commencement of project	
(dd)	After 2 year from the date of commencement of project	5% of the cost of flat

14. Since the complainant has applied for cancellation on 05.02.2022 i.e., after 2 years from the commencement of the project i.e., 29.01.2020(date of EC). Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per Clause 5(iii)(h) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/ plus 5 % of the cost of the flat .
15. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
16. The authority hereby directs the promoter to return the amount received by him i.e., Rs.11,76,650/- after deducting the amount of Rs.25,000/- plus 5% of the cost of the flat along as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest at the rate of 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender dated 05.02.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. 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 promoter as per the function entrusted to the authority under section 34(f):

- i) The respondent /promoter is directed to refund the amount i.e., **Rs. 11,76,650/-** received by him after deducting the amount of Rs.25,000/- plus 5% of the cost of the flat as per clause 5(iii)(h) of Affordable Group Housing Policy, 2013 along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender dated 05.02.2022 till the actual date of refund of the amount.
- ii) It was further directed out of the total amount so assessed, the amount paid by the bank/payee be refunded first in the account of the bank and the balance amount along with interest if any, be refunded to the complainant-allottee.
- 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.
- iv) The cost of Rs. 5,000/- imposed on respondent vide order dated 29.09.2023 shall be included in the decretal amount.

18. Complaint stands disposed of.

19. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.10.2023