



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

<b>Complaint no.:</b>	<b>6522 of 2022</b>
<b>Date of Decision:</b>	<b>16.02.2024</b>

Sanya Bansal D/o Deepak Bansal R/o: - 261 Deepali, Pitampura Delhi - 110034	<b>Complainant</b>
Versus	
Czar Buildwell Private Limited. <b>Regd. Office at:</b> 302-A, Global Foyer, Sector-43, Golf Course Road, Gurugram-122009	<b>Respondent</b>

**CORAM:**

Shri Sanjeev Kumar Arora

Member

**APPEARANCE:**

None

Complainant

None

Respondent

**ORDER**

1. The present complaint dated 20.10.2022 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Mahira Homes , Sector 63A , Gurugram, Haryana.
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	128 of 2019 dated 27.11.2019 valid upto 26.11.2024
4.	RERA Registered / not registered	Registered 04 of 2020 valid up to 19.01.2024 <b>Registration expired</b>
5.	Allotment Letter	22.02.2022 (Page 27 of complaint)
6.	Unit no.	T3-1701
7.	Unit admeasuring	507 sq. ft.
8.	Date of Builder Buyer Agreement	20.04.2022 (Page 32 of complaint)
9.	Possession clause	Clause 4A. <i>The developer proposes to offer the possession of the said apartment within 4 Years from the date of</i>



		<i>approval of building plans or grant of EC whichever is later.</i>
10.	Due date of delivery of possession	03.06.2024 03.12.2023 + 6 months w.r.t. COVID (Calculated from the date of approval of building plans as date of environment clearance is not available)
11.	Total sale consideration	Rs. 21,01,544/- (As per statement of account dated 24.03.2022 on page 65 of complaint)
12.	Total amount paid by the complainant	Rs.10,50,770/- (As per statement of account dated 24.03.2022 on page 65 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -
4. That the respondent herein, is the developer company who is engaged in development and construction of building and group housing society. The Respondent was constructing and developing a residential group housing building known as 'Mahira Homes' situated at Sector-63A, Gurugram, Haryana under affordable housing policy, 2013 of Government of Haryana.



5. That the complainant has submitted her application Form No. 1968 on 14/07/2020 for allotment of affordable 2 BHK flat in project Mahira Homes, sector 63A, Gurugram and paid Rs.1,05,000/- towards booking amount as per policy explained by the promoter.
6. The allotment of the flat was to be made through draw and accordingly, she has been allotted flat T-3-1701, BHK type-B measuring carpet area 507.68 sq.ft and balcony 100 sq.ft.
7. Subsequently, certain dispute arose between the parties and the respondent vide mail dated 14/09/2021 informed her that her allotment has been cancelled.
8. Thereafter, she filed complaint bearing CR/4448/2021 before this Hon'ble Authority and the Hon'ble Authority vide order dated 22/02/2022 allowed the complaint directing the respondent to restore the unit.
9. That as per order passed by this Hon'ble Authority, the complainant paid the request amount to the respondent. On receipt of earnest money, the respondent issued allotment letter in favour of her on 22/02/2022 along with payment plan. That subsequently, flat buyer agreement executed between the parties on 20/04/2022 narrating the terms of sale. In the flat buyer agreement, the promoter agreed that they shall deliver the possession of the flat in 4 years from the date of approval of building plan.
10. That it is respectfully submitted that development work in the project is totally stopped and promoter is not doing any development work within the project. That vide mail dated 19/05/2022 the promoter/respondent herein informed the complainant that License No. 106 / 2017 granted by Town and Country Planning (DTCP), Haryana has been cancelled on 09/05/2022.



11. That further, an order has been passed by Senior Town Planner, Circle Gurugram on 07/07/2022 whereby the promoter has been directed not to raise any demand towards the sale consideration because the payment plan is construction linked plan and DTCP license has also been cancelled. Recently, a public notice has been published in News Paper by Mr. Parmanand Yadav, Advocate on behalf of landowners stating therein that the license No.66 / 2021 issued by DTCP has been cancelled and owners are in possession of the land of the project.
12. That the respondent is not doing any development work within the project and development work within the project is far away from its scheduled time. The promoter has prepared payment schedule as per its own free will and wishes and now compelling the complainant to pay the sale consideration as per payment schedule without adhering the schedule of development within the project. The complainant had paid considerable amount i.e. almost 50% of sale consideration to the promoter as per their demand. Here it is necessary to submit before this Hon'ble Authority that since the promoter is not developing the project as per its development schedule and guidelines of affordable housing scheme and continuously pressurizing the complainant to pay the sale consideration as per schedule and threatening that if the payments not made as per schedule provided then the promoter shall cancel the allotment. In these scenarios, it become necessary to pass appropriate direction against the promoter to raise demand towards sale consideration in accordance with progress in development of the project. Since the promoter is not developing the project and authorities are taking coercive action against the promoter therefore, the complainant in under apprehension to loss her hard earned money.



13. That here it is necessary to submit that the Respondent has issued allotment letter in favour of the Complainant on 22/02/2022 wherein the Respondent has provided payment plan mentioning the specific dates but with utter surprise, the Respondent is not adhering its own word and now raising demand going beyond the payment plan provided with allotment letter. This is not only breach of contract but also cheating with the buyer being done by the promoter. The payment plan attached with the allotment letter clearly speaks about the different dates where the complainant was supposed to pay the sale consideration but now the promoter is changing its stand and demanding the sale consideration from the complainant going beyond the payment plan.

14. That through mail dated 10/09/2022, the promoter has raised another demand amounting to Rs.2,62,691.00 without developing the project up to level. Here it is necessary to submit before this Hon'ble Authority that the complainant has already paid considerable sale consideration but the Respondent has not developed the project at all. In these circumstances, the complainant is under apprehension to lose her hard-earned money. In these compelling circumstances, direction need to be pass against the promoter directing the promoter to raise the demand only when construction within the project reach to certain level because promoter is raising demand as per its own will and wishes without doing any development work at site.

15. Apart this, the promoter is not allotting covered car parking to the complainant and demanding Rs.5,00,000/- towards covered car parking however, this amount is not mention in agreement. Here it is necessary to submit before this Hon'ble Authority that as per norms, the promoter can charge upto 5% of sale consideration only towards covered car

parking but the promoter is demanding huge amount towards covered car parking which is totally unjustified and arbitral.

16. That in the interest of justice, it is necessary to pass appropriate direction against the respondent directing them not to raise any demand from the her till the construction level reach to the status. Direction also needs to pass against the respondent to allot covered car parking to her on reasonable cost as per norms, in the interest of justice.

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

17. The complainant has sought following relief(s):

- I. Direct the promoter to raise demand towards sale consideration in accordance with development of the project.
- II. Direct the promoter not to raise any demand until the project development reach to the level as per payment plan, in the interest of justice.
- III. Direct the promoter to allot one car parking to the complainant and incorporate the same in flat buyer agreement.
- IV. Direct the respondent to pay litigation cost to the complainant.

**D. Reply by the respondent**

18. That the complainant has not come before this Hon'ble Authority with clean hands as she has deliberately suppressed material facts and has attempted to mislead this Hon'ble Authority. That she has filed a forged document of payment plan at Page 28 in her complaint and averred about the same at para 13 (Page 12 - 13) in her complaint. Whereas, contrarily, she has deliberately suppressed the actual payment plan as mentioned in Page 57 of her complaint. Hence, the present complaint ought to be dismissed in limine on this ground alone.



19. That the present complaint is not maintainable as the primary relief sought i.e. withdrawal of the demand letter dated 10.09.2022, was actually in compliance of the order dated 26.08.2022 passed by the Department of Town & Country Planning, Haryana and Clause 5(iii)(b) of the Haryana Affordable Housing Policy, 2013. Further, even this Hon'ble Authority vide Order dated 18.10.2023 had directed the Respondent herein to follow the original payment plan i.e. time linked payment plan for its projects. Hence, the present complaint is now evidently infructuous and therefore, ought to be dismissed or returned.
20. That the complainant is habitually engaged in acts of deferment of payment of her instalments. This is evident from the fact that she had earlier filed a complaint bearing case no. CR/4448/2021 seeking withdrawal of the cancellation of the offer of allotment; which offer was cancelled by the respondent after the complainant had deliberately resorted to dilly-dallying tactics instead of acceptance of the offer of allotment by paying her dues on time. That even by way of the present complaint, the complainant is only interested in wriggling out of her statutory obligations and maliciously achieve deferred payment for her instalments. Therefore, this Hon'ble Authority must not entertain the present complaint filed by her as the same has been filed with ulterior motives.

**E. Jurisdiction of the Authority:**

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

**E. 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.

#### **E. 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.

#### **F. Finding on the reliefs sought:**



**F.I Direct the promoter to raise demand towards sale consideration in accordance with development of the project.**

**F.II Direct the promoter not to raise any demand until the project development reach to the level as per payment plan, in the interest of justice.**

22. The complainant booked a unit in the project of respondent "Mahira Homes", in Sector 63A, Gurugram in 2020. Though allotment was made on 22.02.2022 and buyer's agreement was executed between the parties on 20.04.2022.
23. The due date of possession is to be calculated 48 months from the date of approval of building plans i.e., 03.12.2019 which comes out to be 03.12.2023 as per the possession clause alongwith 6 months of grace period w.r.t. COVID.
24. The complainant through complaint has brought to the attention of the authority that there was a complaint bearing CR/4448/2021 with a direction
- "The matter stands disposed of with a direction that the promoter will withdraw the cancellation notice within one week and thereafter the complainant shall make the due payment within four weeks. File be consigned to the registry."*
25. The subject unit was restored vide the above-mentioned order. Subsequently present compliant has been filed on 20.10.2022.
26. Further, the respondent has placed two orders dated 26.08.2022 and 18.10.2022 of Department of Town and Country Planning (DTCP) and HARERA, Gurugram respectively wherein it was held that request of colonizer to allow raising demands as per original payment plan in their ready launched projects is accepted, subject to four conditions

1. To submit the detailed construction status report of the above said projects as and when the review meeting will be called by the department.
2. To submit the details of cancellation of the allottees due to non-payment of the demand as and when called by the department.
3. To deliver the above said projects within the stipulated time period as per the affordable group housing policy 2013 amended time to time.
4. To strictly follow the guidelines of the affordable housing policy 2013 amended time to time.

27. Keeping in view the said order of DTCP and request of the promoter, the authority decided to issue fresh order to the extent of the condition as mentioned in the above-mentioned order. The objections received if any from the affected allottees be referred to Department of Town and Country Planning (DTCP) for further necessary action.

28. The relief no. 1 and 2 sought in the complaint is with respect to raise of additional demands. The complainant sought those demands to be in lieu of construction linked plan but as per above mentioned orders the said reliefs cannot be deliberated and allottees can approach Department of Town and Country Planning, Gurugram for the said reliefs.

**F.III Direct the promoter to allot one car parking to the complainant and incorporate the same in flat buyer agreement**

29. In view of Affordable Housing Policy, 2013 clause 4(iii),

***Parking norms***

*a. Mandatory non-chargeable 0.5 ECS parking space*

*i. Mandatory parking space at the rate of half Equivalent Car Space (ECS) for each dwelling unit shall be provided.*

*ii. Only one two-wheeler parking site shall be earmarked for each flat, which shall be allotted only to the flat-owners. The parking bay of two-wheelers shall be 0.8m x 2.5m unless otherwise specified in the zoning plan.*

iii. The balance available parking space, if any, beyond the allocated two-wheeler parking sites, can be earmarked as free-visitor-car-parking space.

b. Optional and chargeable parking space at the rate of 0.5 ECS per dwelling unit.

i. The colonizer may provide an additional and optional parking space, maximum to the extent of half Equivalent Car Space (ECS) per dwelling unit

ii. In case such optional parking space is provided by the coloniser; maximum of one car parking space per dwelling unit can be allotted by the coloniser, at a rate not exceeding 5% of the cost of flat to such allottee.

30. The allottee can opt for one car parking space after paying the requisite charges for the same as is mentioned above which may be allotted on draw of lots basis to successful allottees.
31. The complainant is seeking relief w.r.t. litigation cost in the above-mentioned relief. **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)**, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority:**

32. Keeping in view the said order of DTCP and other relevant documents on record, the present complaint stands dismissed.
33. The complainant may approach the competent authority/forum for seeking the above-mentioned reliefs.
34. Complaint stands disposed of.
35. File be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 16.02.2024

**HARERA**  
GURUGRAM