

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

Complaint no.:	7618 of 2022
Date of Decision:	01.03.2024

Mrs. Sunita Devi R/o: - House no. 41, E/88, Near Snai Bhawan, Patel Nagar, Bhiwani(Haryana)	Complainant
Versus	
Czar Buildwell Private Limited. Regd. Office at: 302-A, Global Foyer, Sector-43, Golf Course Road, Gurugram- 122009	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Ms. Vandana Agarwal Advocate	Complainant
None	Respondent

ORDER

1. The present complaint dated 27.12.2022 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Mahira Homes Sector 63-A, Village Bhrampur, Gurugram
2.	Nature of the project	Affordable group housing colony
3.	DTCP license no.	128 of 2019 dated 27.11.2019 valid up to 26.11.2024
4.	RERA Registered / not registered	Registered 04 of 2020 valid up to 19.01.2024 Registration expired
5.	Allotment letter	10.03.2021 (Page 16 of complaint)
6.	Unit no.	T2-1905 floor 19, tower-2 admeasuring 643 sq.ft. carpet area (Page no 16 of complaint)
7.	Date of builder buyer agreement	Not executed
8.	Reminder 1 and Reminder 2 for payment overdue	18.08.2021 and 02.09.2021 (Page no 19 and 20 of complaint)
9.	Cancellation Notice	11.09.2021 (Page no 21 of complaint)
10.	Due date of possession	10.03.2024 (Calculated from the date of allotment letter)
11.	Total sale consideration	Rs.26,55,180/- (As alleged by complainant no page 15 of complaint)

12.	Paid up amount	Rs.16,55,837/- (As alleged by complainant on page 15 of complaint)
13.	Occupation certificate	NA
14.	Offer of possession	NA

B. Facts of the complaint:

3. The complainant has made the following submissions: -
4. That the Respondent is engaged in business of developing of land and construction activities. Besides developing of lands it undertakes projects of affordable housing group flats which includes the construction and allotment to individuals. That complainant applied for affordable Housing Project bearing application no. MH63AQ-915 submitted to the company ie CZAR Buildwell Private Limited for the allotment of 3BHK Unit Type-A, Carpet area 643.28Sq.Ft.in Mahira Homes -63-A situated in Tehsil & District Gurugram- 122001 by paying Rs. 1,31,300/- (Rs. One Lakh Lacs Thirty One Thousands Three Hundred only) dated 03.07.2020.
5. That the complainant received the allotment letter dated 10th march 2021_ ^ that unit no. T2-1905, Type 3BHK unit Type-A, on floor no. 19 in Tower T2 in affordable Housing Project of the company situated in Sector 63A, Village Bhrampur, Near Nadiark, Opposite of Park Squar Building, situated in Tehsil & District Gurugram- 122001 is allotted to complainant.

6. That the complainant paid the 2nd instalment amounting to Rs. 5,31,036/- dated 24.03.2021 through Cheque in favour of "Mahira Homes 63A". That the complainant received the demand letter from respondent for third instalment of Rs. 3,31,167/- dated 10.08.2021.
7. That the thereafter complainant received the reminder-1 of demand notice on 18.08.2021 and reminder-2 of demand notice dated 2.09.2021 but the due date was 10.09.2021.
8. That the thereafter complainant received the cancellation notice of the above said unit on 11.09.2021 with intimation to submit the instalment by 25.09.2021. That because of corona virus II wave complainant was not in position to pay the instalment by 25.09.2021 but the complainant paid the third instalment dated 05.10.2021 after delay of 10 days.
9. That it is pertinent to mention here that the complainant paid fourth and fifth instalment with in time without receiving any demand letter through RTGS in favour of "Mahira Homes 63A". as per payment plan
 - i) That it is pertinent to mention here that respondent sent demand of third instalment but BBA was not signed between the parties which is mandatory U/S 11(5) of RERA Act after receiving the 10% of the total sale consideration. That the complainant sent request letters for reinstate the above said unit on different dates ie 7.03.2022,11.03.2022, 26.03.2022,

15.07.2022, 8.09.2022, but all in vain. That respondent send the pre-cancellation notice for captioned unit to complainant by exercise his power but without refunding the amount deposited by complainant which reflects the malafide intentions of the company to grab the amount deposited by complainant. That forcefully cancellation of the unit is the final cause of action to file the present complaint and cause of action is continuous one, hence the present complaint. That it is quite apparently clear that Respondents have dishonest, malafide and mischievous intentions to grab the amount from complainant and to obtain wrongful gain and causing wrongful loss to complainant.

C. Relief sought by the complainant:

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

- I. Direct the respondent to reinstate the unit no T2-1905, type 3bhk unit, on floor no 19 in tower 2 in affordable housing project.**
- II. To impose penalty on respondent for not signing agreement for sale after taking 10% amount of total sale consideration.**
- III. Award cost of Rs 1,00,000/- (One lakh only) towards litigation expenses.**

11. The present complaint was filed on 27.12.2022 and registered as complaint no. 7618 of 2022. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by

the complainant with the complaint. On 13.10.2023 the authority proceeded ex-parte against the respondent. But on 05.01.2024 the counsel for the respondent appeared and filed an application for setting aside the ex-parte orders. The authority on 05.01.2024, in the interest of justice, directed the respondent to file written submissions within a period of 2 weeks i.e., by 19.01.2024. Till date no such written submissions have been filed by the respondent accordingly the authority presumes that respondent has nothing to say on his behalf proceeding the matter as per the documents already placed on record and hereby the defence of the respondent stands struck off.

D. Jurisdiction of the Authority:

12. 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.

E. Entitlement of the complainant for refund:

E.I Direct the respondent to reinstate the unit no T2-1905, type 3bhk unit, on floor no 19 in tower 2 in affordable housing project.

E.II To impose penalty on respondent for not signing agreement for sale after taking 10% amount of total sale consideration.

E.III Award cost of Rs 1,00,000/- towards litigation expenses.

13. The above-mentioned reliefs are being taken up together as the findings with respect to one relief will affect the findings of other reliefs. The complainant was allotted unit no. t2-1905 the project "Mahira Homes" by the respondent/builder for a total consideration of ₹ 26,55,180/-

under the Affordable Group Housing Policy 2013. No buyer's agreement was executed. The possession of the unit was to be offered with 4 years from approval of building plans or from the date of environment clearance whichever is later. The due date of possession have been calculated from the date of allotment as both the above-mentioned dates are not available. Accordingly, the due date of possession comes out to be 10.03.2025. The complainant paid a sum of ₹ 16,55,837/- as per the details provided by the complainant on page 15 of complaint. The respondent promoter on 18.08.2021 and 02.09.2021 issued the demand letters. The respondent promoter thereafter issued cancellation notice dated 11.09.2021 after publication of list of defaulters in "Punjab Kesari" on 11.09.2021. In line with the aforesaid facts, the pleadings and documents 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?"

14. The authority has examined the cancellation notice dated 11.09.2021. Since the project is an affordable group housing project, the cancellation process shall be as per clause 5(iii)(i) of the AHP, 2013 only. The relevant clause is reproduced below for the reference:

"If any successful applicant fails to deposit the installments 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 installments 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 news-paper 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"

15. The due procedure of cancellation being mentioned in the policy, 2013 is that if any complainant makes default of any installment due then the promoter shall issue a reminder notice for clearing the outstanding dues within 15 days from the date of reminder and thereafter, if the default continues, publish the list of defaulter in daily newspaper and finally after the lapse of 15 days from the date of publication can issue the cancellation letter. As per the cancellation letter dated 11.09.2021 on one hand the respondent gives 15 days' time to clear the outstanding dues and on the other hand states that they have published in the newspaper on 11.09.2021 and accordingly the allotment stands cancelled. Accordingly, it is established that the letter dated 11.09.2021 has not been issued after following the due procedure mentioned in clause 5(iii)(i) of the AHP, 2013 as discussed above therefore, the said cancellation notice dated 21.08.2021 is not valid and the authority hereby sets aside the same.
16. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit. Moreover, the cancellation letter dated 11.09.2021 is set aside as referred above the respondent is hereby directed to re-instate the said unit of the complainant within 30 days from the date of this order and handover the possession of the unit within 2 months after receiving occupation certificate from the competent authority as per section 17(1) of the Act. The complainant is also directed to make the payment of the outstanding amount, if any according to the payment plan as prescribed under the Affordable Policy, 2013.

E.III. To compensate the complainants for the said legal action by paying the applicable litigation and other legal expenses being incurred.

17. The complainants in the aforesaid relief are seeking relief w.r.t compensation. 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.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

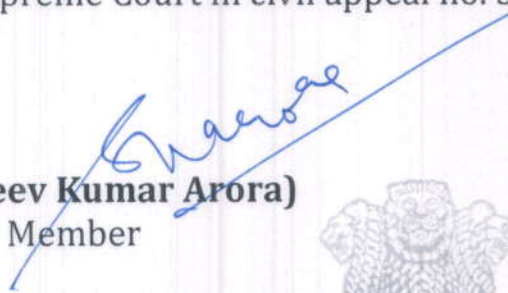
F. Directions of the authority

18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to re-instate the unit of the complainant, within 30 days from the date of this order.
- ii. The respondent is further directed to handover the possession of the unit within 2 months after receiving occupation certificate from the competent authority as per section 17(1) of the Act. The complainant is also directed to make the payment of the outstanding amount, if any according to the payment plan as prescribed under the Affordable Policy, 2013



- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024



HARERA
GURUGRAM