

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

Complaint no.:	7074 of 2022
Date of decision:	29.03.2024

Sh. Tushar Jindal S/o Sh. Vinod Kumar Gupta  
R/o: - D-246, Nirman Vihar  
Vikas Marg, Delhi- 110092

**Complainant**

Versus

M/s Czar Buildwell Private Limited.  
**Regd. Office at:** 302-A, Global Foyer,  
Sector-43, Golf Course Road, Gurugram-  
122009

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

Member

**APPEARANCE:**

Sh. Vinod Kumar Gupta (Advocate)

None

**Complainant  
Respondent**

**ORDER**

1. The present complaint dated 14.11.2022 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:

Sr. No.	Particulars	Details
1.	Name of the project	Mahira Homes, Sector 95, Gurugram, Haryana.
2.	Nature of the project	Affordable Housing Scheme project, Multistoried towers
3.	DTCP license no.	24 of 2020 dated 10.09.2020 valid up to 09.09.2025
4.	RERA Registered / not registered	GGM/416/148/2020/32 Dated 08.10.2020 (valid up to 17.09.2025)
5.	Unit no.	T4-103 (Page 53 of complaint)
6.	Unit admeasuring	643.278 sq. ft. (Page 53 of complaint)
7.	Date of builder buyer agreement	12.03.2021 (Page 51 of complaint)
8.	Allotment letter	08.12.2020 (page 34 of complaint)
9.	Date of Building plan approval	18.09.2020 (as per the information uploaded by the respondent on website at the time of registration of project)

10.	Date of environmental clearance	27.07.2020  (as per the information uploaded by the respondent on website at the time of registration of project)
11.	Possession clause	<i>In absence of execution of the agreement under Affordable housing project, the possession clause given under the Affordable Housing Policy 2013 would prevail. Section 1 (iv) of Affordable housing policy 2013 which provides as under:</i>  <b>Section 1 (iv)</b>  <i>All such projects shall be required to be necessarily completed <b>within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.</b> This date shall be referred to as the date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
12.	Due date of delivery of possession	<b>18.09.2024</b>  (Note: due date of possession is calculated from the date of building plan approval i.e., 18.09.2020 being later.)  *The due date of possession has been inadvertently mentioned as 11.09.2016 in the proceedings dated 16.02.2024
13.	Total sale consideration	Rs. 26,49,344/-  (page 55 of complaint)
14.	Total amount paid by the complainant	Rs. 9,93,503/-  (page 40 of complaint)

15.	Occupation certificate	Not yet obtained
16.	Offer of possession	Not offered
17.	Date of application of surrender	20.01.2022 (Page 39 of complaint)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- a. The complainant invested in affordable housing scheme, Sector 95, Gurugram project by name mahira homes 95 on 22.10.2020 by filling up the required form and paying booking amount of Rs 1,31,000/-. A 3 BHK flat with carpet area- 643 sq. ft & balcony area- 100 sq. ft, having total price of Rs 26.49 lakhs, was booked.
- b. After draw of lots on 8<sup>th</sup> Dec-2020, the complainant was allotted unit no. 103 in Tower T4.
- c. As per demand letters issued by the respondent, payments of allotment money (20% of total cost) & instalment money (12.5%) were done as follows:
  - i. Rs.5,31,336/- (allotment money) paid through RTGS on 23.12.2020.
  - ii. Rs.3,31,167/- (instalment money) paid through NEFT on 07.06.2021.
- d. He has paid total amount of Rs 9,93,503/- (37.5% of total cost) till date. He checked construction progress of the project through mahira homes website and made a physical visit to the site. The progress of work was very poor, only excavation work could be observed. The complainant expressed his concern at poor progress

of the work through e-mail and telephonic communications but no satisfactory reply could be obtained from the respondent.

- e. The registration of flat buyers' agreement carried out in Sub registrar office in Harsaru, Gurugram on 12<sup>th</sup> March-2021. An amount of Rs 5,000/-, in cash, was given to the respondent representative at office premises on the same day, as per his demand, however no receipt was issued for this amount. The complainant was asked to collect the agreement from the respondent office in Sector 43, Gurugram after a week, my request for sending it through speed post/courier was turned down.
- f. He received demand letter from the respondent for payment of instalment money of Rs 3,31,167/- (12.5% of total cost) on 3<sup>rd</sup> Nov-2021. However still no satisfactory reply to the query of poor progress at site was offered. He decided to surrender the flat and apply for refund of money. After discussion with concerned personnel of the respondent, complainant sent his application through e-mail and subsequently sent the physical copy of the application through speed post on 20<sup>th</sup> Jan.-2022. An acknowledgement of the application was received on 25<sup>th</sup> Jan-2022. The complainant was assured that the refund will be given within 90 days (3 months) but even after 7 months and constant reminders/follow-up through e-mail & telephonic communications, neither refund has been given nor a firm date for the refund has been promised.

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

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

- a. To direct the respondent to return the amount paid Rs. 9,93,503/- with interest in respect of the allotted unit with interest at the prescribed rate.

**D. Reply by the respondent**

5. The present complaint was filed on 14.11.2022 and registered as complaint no. 7074 of 2022. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. On 16.02.2023 the counsel for the respondent appeared and filed power of attorney and requested for a short adjournment for filing the reply. Therefore, the service of notice is complete. Since no reply was filed by the respondent within the time specified even after multiple opportunities being granted by the authority accordingly, the defence of the respondent was struck off on 22.09.2023. That on 17.11.2023 last and final opportunity was given to respondent to put in appearance and argue the matter otherwise it shall be decided ex-parte. None appeared on behalf of respondent therefore, 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 and proceeds ex-parte.

**E. 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.

**E. I Territorial jurisdiction**

7. 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**

8. 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.*

9. 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.
10. 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."*

11. 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.

**F. Findings on relief sought by the complainant:**

**F.I To direct the respondent to return the amount paid Rs. 9,93,503/- with interest in respect of the allotted unit with interest at prescribed rate.**



12. The complainant vide allotment letter dated 08.12.2020 was allotted a unit bearing no. T4-103 in the project namely "Mahira Homes-95" located in sector-95, Gurugram being developed by M/s Czar Buildwell Pvt. Ltd. Further, the complainant has paid an amount of ₹9,93,503/- which is approx. 37% of the total sale consideration of ₹26,49,344/- by the year 2021. The complainant in its complaint further stated that on 02.01.2022 an application for surrender was made by the complainant to the respondent on account of no work on project site was observed till that date despite making payment of about 37% of the total consideration of the subject unit.
13. It is pertinent to mention that the authority on 28.05.2022 initiated Suo-Motu action against the promoter under section 35 of the Act, 2016 based upon the site visit report submitted on 19.05.2022 wherein it is clearly stated the physical work progress of the project is approximately 5-7% only and does not commensurate to the payments collected from the allottees. Moreover, on 17.05.2022 the Director Town & Country Planning blacklisted the said developer from grant of license on account of submitting forged and fabricated bank guarantees and also forged signatures of the bank officials on the bank guarantees being submitted by CZAR Buildwell Pvt. Ltd which was subsequently withdrawn by the department on 21.07.2022 subject to fulfillment of certain conditions. Also, on 19.07.2022 all the accounts were freezed by the authority due to non-compliance of the provisions of the Act, 2016. Finally on 06.09.2023 the authority initiated suo-motu revocation proceedings under section 35 of the Act, 2016. Thereafter, the authority vide order dated 11.03.2024 revoked the registration certificate



of the project under section 7(1) of the Act, 2016 and accordingly the respondent company shall not be able to sale the unsold inventories in the project and also, the accounts are freezed therefore, this may amount to discontinuation of business.

14. The authority considering the above mentioned facts opines that although the due date of possession has not lapsed yet and section 18 of the Act, 2016 is invoked if the promoter is unable to handover the possession of the unit as per the terms of the agreement due to discontinuance of his business as developer on account of on account of suspension or revocation of the registration under this Act or any other reason then the complainant shall be entitled for entire refund of the amount paid to the respondent along with the prescribed rate of interest. The relevant portion is reproduced herein below for the ready reference:

**“Section 18: Return of amount & compensation:**

(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:.....”

15. The authority is of the view that since the accounts of the said project are freezed by the authority and also financial auditor was appointed even then the respondent -developer does not made any devoted



efforts to complete the said project. Also, vide order dated 11.03.2024 revoked the registration certificate of the project under section 7(1) of the Act, 2016 therefore, the promoter cannot carry out the business in presence of the said circumstances, also due to the promoter's frivolous behaviour, there seems no possibility of completing the said project by the due date or even beyond it in near future and therefore, the authority is of the view that the complainant is entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter. Accordingly, the authority directs the respondent to refund the paid-up amount of ₹9,93,503/- received by it along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

**G. Directions of the authority:**

16. 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):
  - a. The respondent /promoter is directed to refund the amount i.e., ₹ 9,93,503/- received by it along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.



**HARERA**  
**GURUGRAM**

Complaint No. 7074 of 2022

- b. 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.
17. Complaint stands disposed of.
18. File be consigned to registry.



*Sanjeev Kumar Arora*  
(Sanjeev Kumar Arora)  
**Member**

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 29.03.2024**

**HARERA**  
**GURUGRAM**