

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

Complaint no.:	7119 of 2022
Date of decision:	29.03.2024

Sh. Vidit Das
R/o: - #325, Pocket-2, Sector 12, Dwarka,
Delhi- 110078

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:

Ms. Surbhi Bhardwaj(Advocate)

None

**Complainant
Respondent**

ORDER

1. The present complaint dated 17.11.2022 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 104, Gurugram, Haryana.
2.	Nature of the project	Affordable Housing Scheme project, Multistoried towers
3.	DTCP license no.	66 of 2021 dated 07.09.2021 valid up to 06.09.2026
4.	RERA Registered / not registered	GGM/504/236/2021/72 DATED 25.10.2021 (valid up to 02.12.2025)
5.	Welcome letter	06.12.2021 (Page 17 of complaint)
6.	Unit no.	T4-403 floor 4, tower-T4 admeasuring 642.36 sq.ft. carpet area (Page no 26 of complaint)
7.	Date of builder buyer agreement	03.03.2022 [pg. 22 of complaint]
8.	Consent letter for revision of building plan	Not dated [pg. 53 of complaint]
9.	Date of Building plan approval	25.10.2021 (as per the information provided by the respondent on website at the time of registration of project)



10.	Date of environmental clearance	27.04.2022 (As per the website of SEIAA, Haryana)
11.	Possession clause	<p><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></p> <p>Section 1 (iv)</p> <p><i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. 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></p>
12.	Due date of delivery of possession	27.04.2026 (Note: due date of possession is calculated from the date of environment clearance i.e., 27.04.2022 being later.)
13.	Total sale consideration	₹ 26,19,440/-/- [pg. 28 of complaint]
14.	Total amount paid by the complainant	₹ 6,61,990/-/- [As alleged by complainant on page 14 of complaint]
15.	Occupation certificate	Not yet obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a. That the complainant is an allottee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016. The respondent company, M/S Czar Buildwell Private Limited is a private limited company incorporated company under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- b. That the complainant while searching for residential apartment were lured by the advertisements /brochures /sales representatives of the company to buy a house in their project namely "MAHIRA:FUTURE OF URBAN LIFESTYLE" project at Sector 104, Gurugram, Haryana. The agents and officers of the respondent's company told the complainant about the moonshine reputation of the company and the agents of the respondent's company made huge presentations about the project mentioned above and also assured that they have delivered several projects in the national capital region prior to this project. The respondent handed over one brochure to the complainant, which projected a very interesting landscaping of the said project and went on to incite the complainant to part with their hard-earned money by way of making payments. The respondent claimed that they have taken all due approvals. sanctions and Government permissions towards development and construction of "Mahira:Future Of Urban Lifestyle" project and after representing through brochures, about the facilities to be provided, the respondent managed to

impress the complainant, who then decided to invest their hard-earned money in purchasing the unit at "Mahira:Future Of Urban Lifestyle " project.

- c. That the complainant on various representations and assurances made by the respondent, booked the residential flat by vide application no-17978 dated 13.11.2021 and subsequently the demand by the respondent was raised for the booking amount, which was paid by the complainant amounting to ₹1,29,060/- by vide challan no- DP51245 & DP51286 for the allotment of residential flat in affordable housing colony "MAHIRA HOMES".
- d. That the complainant received welcome letter dated 04.12.2021 along with the future payment plan for the unit bearing no-T4-403, unit type 2BHK+ Utility- Type 2, Floor 4th, Tower-T4 having an admeasuring carpet area of 642.36 sq. ft. along with balcony area of 148.17 sq. ft. situated at sector-104, Gurugram, Haryana, India.
- e. That thereafter the complainant while keeping the purview of payment plan made a payment of ₹5,32,930/- for the unit in question . It is pertinent to mention that as per payment plan this amount had to be disbursed within the 15 days of allotment letter and same was acknowledged by the complainant on 14.12.2021 by an instrument no- 370887 which was drawn from Axis Bank Ltd.
- f. That the complainant made a payment of ₹6,61,400/- which is approximately 25% of the total consideration i.e. ₹26,45,638/- towards the total basic sale price (hereinafter referred to as the BSP). It is pertinent to mention that builder buyer agreement has

been executed for the unit in question between complainant and respondent on 03.03.2022.

- g. That complainants being induced by the respondent, contacted the official representatives of respondent company many times to get the information of construction progress and the same was ignored intentionally and deliberately. It is pertinent to mention that the complainant visited the construction site and was shocked to see the land where project had to constructed was empty/barren land as no construction activity was going nevertheless not even a single worker/labour was at construction site.
- h. That the conduct/affairs of the respondent company towards the allottees is so adverse that the license of the respondent company i.e. 31 of 2019, 128 of 2019, 24 of 2020 and 66 of 2021 was blacklisted on 17.05.2022 on account of submission of forged & fabricated bank guarantees.
- i. It is further more stated that the respondent company acted fraudulently on various occasion to extort the hard earned money of the complainant by securing money ta for the barren/empty land by the name of the project "Mahira Homes" as the respondent failed to achieve its construction milestone.
- j. That the present complaint has been filed in order to seek the refund of the unit along with the interest at prescribed rate on already paid money and other relief.

C. Relief sought by the complainant:

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

- a. To direct the respondent to return the amount paid with interest in respect of the allotted unit with interest at the prescribed rate.
- b. Litigation cost- ₹55,000/-.

D. Reply by the respondent

5. The present complaint was filed on 17.11.2022 and registered as complaint no. 7119 of 2022. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. On 14.03.2023 the counsel for the respondent appeared and filed power of attorney and requested for a short adjournment for filing the reply. The request was allowed and was directed to file reply within two weeks i.e., by 28.03.2023 in the registry. Again, on last opportunity was to file the reply within four weeks with a cost of ₹5000/-. On 24.11.2023 respondent put in appearance and since no reply was submitted accordingly the defence was hereby struck off by the authority presuming that respondent has nothing to say on his behalf and proceeding the matter as per the documents already placed on record.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the Authority:

7. 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

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 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.

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.
11. 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.”

12. 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 with interest in respect of the allotted unit with interest at prescribed rate.

13. The complainant vide welcome letter dated 06.12.2021 was allotted a unit bearing no. T4-403 in the project namely "Mahira Homes-104" located in sector-104, Gurugram being developed by M/s Czar Buildwell Pvt. Ltd. Further, the complainant has paid an amount of ₹6,61,990/- which is approx. 25% of the sale consideration of ₹26,19,440/- by the year 2021. The complainant in its complaint further stated that no work on project site was observed despite making payment of about 37% of the total consideration of the subject unit.
14. 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 18.05.2022 wherein it is clearly stated that only excavation work for tower 2, 3 & 4 was started at site. 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.

15. 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:....."

16. 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 ₹6,61,990/- 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.

F.II. Litigation Cost- ₹55,000/-.

17. The complainant is claiming compensation in the above-mentioned relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement /rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority:

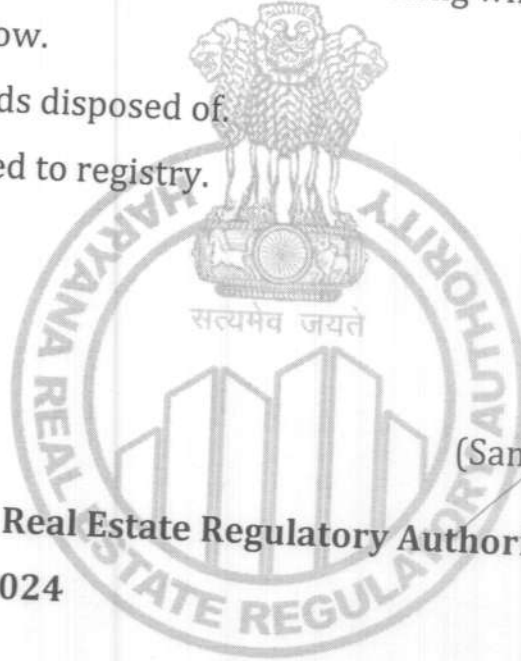
18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):



HARERA
GURUGRAM

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- a. The respondent /promoter is directed to refund the amount i.e., ₹6,61,990/- 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.
 - 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.
19. Complaint stands disposed of.
 20. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.03.2024

HARERA
GURUGRAM