

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

Complaint no.:	6883 of 2022
Date of Decision:	09.02.2024

Sh. Ankur Singh R/o: - Village Sarai Jaganath, Tehsil Sikandrabad, District Bulandshahar, Ghaziabad, Uttar Pradesh	Complainant
Versus	
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. Ashish Budhiraja, Advocate

Complainant

None

Respondent

ORDER

1. The present complaint dated 19.10.2022 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 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 Group Housing Colony
3.	DTCP license no.	66 of 2021 dated 07.09.2021 valid up to 06.09.2026
4.	RERA Registered / not registered	Registered 72 of 2021 25.10.2021 up to 02.12.2025
5.	Allotment Letter	03.12.2021 (Page 24 of complaint)
6.	Unit no.	T8-606 (Page 24 of complaint)
7.	Unit admeasuring	337 sq. ft. (Page 24 of complaint)
8.	Date of builder buyer agreement	Not executed
9.	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 purchaser(s) having complied with all the terms and conditions of this

		<i>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>
10.	Due date of delivery of possession	03.06.2026 03.12.2025 +6 months of grace period w.r.t. COVID (From the date of allotment as date of environment clearance or approval of building plans are not available in the file)
11.	Total sale consideration	Rs. 13,95,070/- (As alleged by the complainant - page 13 of complaint)
12.	Total amount paid by the complainant	Rs. 3,49,357/- (As alleged by the complainant- page 13 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Surrender request by complainant	19.09.2022 (Page 21 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

4. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant filed an application dated 13.11.201 bearing no. 17983 for 1BHK TYPE 4 affordable apartment to be allotted by the draw of lots held by the respondent. That through the online draw of lots conducted on 03.12.201 complainant was allotted a 1BHK-TYPE-4 residential apartment bearing unit No. T8-606 on 6th Floor in Tower-T8 admeasuring carpet area 337.66 sq. feet at Mahira Homes 104 at Sector 104, Gurugram, Haryana for total sale consideration of **Rs 13,95,070/-** which includes BSP, IFMS, Club Membership, PLC etc including Taxes and paid the booking amount of Rs. 68,123.40/- to the Respondent, duly acknowledged by the respondent vide receipt dated 13.11.2021 and the allotment letter for the said unit was issued.

5. That on 03.12.2021, respondent issued allotment letter to the complainant in respect of unit no. T8-606, 6th Floor, Tower T8, at Mahira Homes 104 situated at Sector-104, Gurugram, Haryana.

6. That subsequently, the respondent issued demand/tax invoice for the payment towards the booked apartment and accordingly the amount was paid by the complainant and acknowledged by the respondent. A receipt

amounting to Rs. 2,81,234/- dated 24.12.201 was issued by the respondent for the payment made through cheque by the complainant. It is pertinent to mention here that till this time the respondent has received the total payment of Rs. 03,49,357.4/- of the total sale consideration of Rs. 13,95,070/ which almost 25% of the total sale consideration amount.

7. However, the complainant visited the site in the month of September 2022, he was shocked to see that even the civil work has not been started and there was no likelihood of the project to be completed anytime soon.

C. Relief sought by the complainant:

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

- I. Direct the respondent to refund the paid-up amount along with interest at the prescribed rate.

D. Reply by the respondent

9. It is the complainant himself who has failed to execute the said flat buyer's agreement despite the respondent having called him on multiple occasions to execute the agreement. It is pertinent to mention herein that payment related terms for Affordable Housing Projects are governed under the special law i.e. the said Haryana Affordable Housing Policy, 2013. It is further pertinent to mention herein that as per Clause 5(iii)(b) of the said Policy, if any applicant/ participant for draw of lots for

allotment is successful, then he shall have to pay 20% of the consideration amount at the time of allotment.

10. The complainant had submitted the request for cancellation of his allotment for personal reasons vide e-mail dated 19.09.2022, to which the respondent had specifically requested him to submit certain documents to process his cancellation. However, till date, no such document has been submitted by the complainant. That it is pertinent to mention herein that the refund amount, after due deductions, can only be in accordance with the provision of Clause 5(iii)(h) of the said Haryana Affordable Housing Policy, 2013.

E. Jurisdiction of the Authority:

11. 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.

12. 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."

13. 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. Entitlement of the complainant for refund:

F.I Direct to the respondent to refund an amount of Rs. 3,49,357/- along with interest.

14. The complainant booked a unit in the project of respondent "Mahira Homes", in Sector 104, Gurugram in 2021 and paid a booking amount of Rs.67,533/- on 13.11.2021. 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. 3,49,357/-.
15. The due date of possession is to be calculated 48 months from the date of allotment i.e., 03.12.2021 which comes out to be 03.12.2025 as per the possession clause of another project of affordable group housing.

16. The complainant through complaint has brought to the attention of the authority that there is no progress at site till date and request for cancellation/surrender of application made on 19.09.2022.
17. The project was registered on 25.10.2021 and valid up to 02.12.2025. The authority has gone through the possession clause of the agreement of another project of affordable group housing and observed that the 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 and date of environment clearance are not available. The due date is calculated from the date of allotment, so, the due date of subject unit comes out to be 03.12.2025. **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 03.12.2025 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 **03.01.2026.**
18. 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 commencement of project	3% of the cost of flat
(dd)	After 2 year from the date of commencement of project	5% of the cost of flat

19. Since the complainant has applied for cancellation on 19.09.2022 i.e., within 1 year from the commencement of the project i.e., 01.10.2021 (date of starting of construction work as per details uploaded by planning branch on HARERA's website). 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 1 % of the cost of the flat .
20. 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.
21. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 3,49,357/- after deducting the amount of Rs.25,000/- plus 1% 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 10.85% (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 i.e., 19.09.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

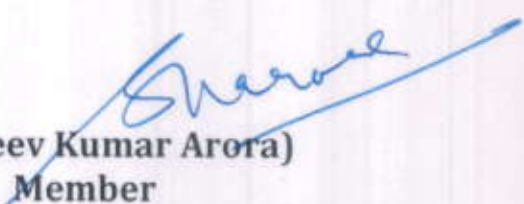
G. Directions of the authority:

22. 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. 3,49,357/-** received by it after deducting the amount of Rs.25,000/- plus 1% 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 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 19.09.2022 till the actual date of refund of the amount.
- ii) 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.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2024