

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

Complaint no.:	1305 of 2023
Date of decision:	24.05.2024

Sh. Vinod Kumar
R/o: - #A-17, Mansa Ram Park, Uttam
Nagar, DK Mohan Garden, Dwarka, West
Delhi

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:

Mr. Surbhi Bhardwaj(Advocate)

None

**Complainant
Respondent**

ORDER

1. The present complaint dated 28.03.2023 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.	Allotment letter	04.02.2022 (Page 17 of complaint)
6.	Unit no.	T1-803 floor 1, tower-T1 admeasuring 642.35 sq.ft. carpet area (Page no 37 of complaint)
7.	Date of builder buyer agreement	28.06.2022 [pg. 35 of complaint]
8.	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)
9.	Date of environmental clearance	27.04.2022 (As per the website of SEIAA, Haryana)



10.	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>
11.	Due date of delivery of possession	<p>27.04.2026</p> <p>(Note: due date of possession is calculated from the date of environment clearance i.e., 27.04.2022 being later.)</p>
12.	Basic sale consideration	<p>₹ 26,19,408/-</p> <p>[pg.39 of complaint]</p>
13.	Paid up amount	<p>₹ 2,62,000/-</p> <p>[As alleged by complainant on page 14 of complaint]</p>
14.	Occupation certificate	Not yet obtained
15.	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 somewhere around 2021-2022, the respondent approached the complainant through its representatives and offered to buy an affordable residential apartment in their newly launched project namely, "Mahira Homes 104" (hereinafter called as 'project in question') located at Sector 104, Gurugram. The representatives of the respondent company told the complainants about the moonshine reputation of the company and that they aim to deliver the best of affordable housing with ample car parking for each apartment, open scooter parking, kids play area, open gym, restaurants, boutique shops, badminton court, basketball court, jogging track, amongst other facilities. It was assured that the project in question was being developed only after taking all due approvals and government permissions.
- c. That thereafter, the complainant visited respondent's office where its representatives painted a rosy picture of the project and made various tall claims by showing the features and model flat to them, thereby inducing them to purchase a unit in the said project.
- d. That being caught in false assurances and promises of the Respondent and relying on the goodwill of the respondent company, the complainant booked a residential unit in the said project by filling application form bearing no. MH104-MH1054 and

was selected as a successful applicant in the online draw conducted by the respondent company. Accordingly, vide allotment letter dated 04.02.2022, an apartment bearing no. T1-803 (unit type: 2BHK + UTILITY-TYPE 2) located on 8th floor in tower 'T1' admeasuring carpet area of 642.352 sq. ft. (hereinafter referred as the 'unit' in question) was allotted in favour of the complainant.

- e. That thereafter, the complainant made the payment of an amount of Rs.1,31,000/- vide instrument bearing no. 021787 dated 09.04.2022, drawn on ICICI Bank and an amount of ₹1,31,000/- vide instrument bearing no. 021788 dated 10.04.2022, drawn on ICICI Bank, towards the booking of said unit.
- f. That meanwhile, the complainant applied for financial assistance/home loan for the unit in question and a home loan amounting to ₹25,11,744/- was sanctioned by IIFL Home Finance Limited on 04.05.2022 in favour of the complainant.
- g. That subsequently, in May'2022, a flat buyer's agreement was executed between the complainant and the respondent for the unit in question as is evident from the stamp on the agreement, though later on the date of execution mentioned in the agreement copy given to the complainant was 28.06.2016.
- h. That as per clause 4 of the agreement, the respondent had undertaken to complete the project and handover possession within a period of 4 years from the date of approval of building plans(25.10.2021) or date of grant of environmental clearance(27.04.2022), whichever later, i.e. by 26.04.2026.
- i. That thereafter, to the utter shock of the complainant, he came to know through a public disclaimer/notice issued by one Advocate

Parmanand Yadav in leading daily newspaper that the respondent company had been blacklisted by DTCP. On conducting further inquiry, the complainant caught hold of the blacklisting order dated 17.05.2022 whereby DTCP blacklisted the respondent company on account of committing grave violations of the licenses issued to them and for fabricating bank guarantees and forging the signatures of bank officials in the guarantees produced before DTCP. This left the complainant aghast and accordingly, he rushed to the respondent's office in order to inquire about all this but the latter's representatives simply assured that there was some departmental misunderstanding which would be sorted out soon.

- j. That thereafter, a series of applications seeking review of the blacklisting order was filed by the respondent company before DTCP which were heard and vide order dated 21.07.2022, the DTCP withdrew the blacklisting order but subject to conditions like submission of construction status, not demanding any money against the construction status, amongst others. This was followed by order dated 26.08.2022 whereby DTCP allowed the respondent to raise payment demands subject to submission of detailed construction status and strictly deliver projects as per the timeline laid down by the Affordable Housing Policy, 2013.
- k. That from May'2022 till date, the construction at the project site has been completely stalled and the suo moto complaint filed against the respondent is being regularly heard by the Hon'ble Authority apart from the proceedings going on before the DTCP as well. Keeping in view the aforesaid and the fact that the construction on the project site has not progressed even an inch

since 2022, the complainant approached the respondent company to either sort out the legalities or resume construction at the project site or to refund back his money. It was also highlighted by the complainant that the financing bank has also refused to disburse any amount keeping in view the stalled construction at the project site. However, the respondent failed to give a concrete response to the same and simply asked the complainant to deposit more amount with them to which the complainant raised serious objection and refused to make any further payment until construction resumed at the project site.

- i. That thereafter, to the utter shock of the complainant, in March'2023, the respondent conducted another draw for the project in question wherein the unit in question was also listed an applications were invited for the same. This left the complainant startled as no cancellation letter was given to him nor the amount paid by him was refunded back to him. Accordingly, the complainant approached the respondent's office in order to raise objection regarding said listing but again to no avail.
- m. That the aforesaid misconduct of the respondent has not only caused extreme mental agony to the complainant but has also resulted in financial loss to him thereby furthering his mental harassment. The dream of having a home of his own has been brutally shattered by the respondent due to his wrongful conduct and ill motives which were in existence right from day one of the inception of the sale transaction in question.
- n. That till date, the complainant has paid an amount of ₹2,62,000/- towards the unit in question. The complainant has been repeatedly

requesting the respondent to refund back his paid amount but all in vain. Hence this complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. To direct the respondent to return the amount paid in respect of the allotted unit with interest at the prescribed rate.

D. Reply by the respondent

5. The present complaint was filed on 28.03.2023 and registered as complaint no. 1305 of 2023. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. On 25.08.2023 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 4 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.
7. On 01.03.2024 the authority directed both the parties to submit written submissions within a period of 15 days i.e., by 16.03.2024 but no such submissions are being filed by either of the parties till date accordingly, the authority presumes that the parties have nothing to say on their behalf except for the facts being stated in the complaint.

E. Jurisdiction of the Authority:

8. 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

9. 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

10. 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.

11. 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. 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.

14. The complainant vide allotment letter dated 04.02.2022 was allotted a unit bearing no. T1-803 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 ₹2,62,000/- which is approx. 10% of the sale consideration of ₹26,19,408/- by the year 2022. The complainant in its complaint further stated that no work on project site was observed despite making payment of about 10% of the total consideration of the subject unit. Thereafter, the BBA was executed interse parties on 28.06.2022 and the same was registered.
15. 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 the accounts of the respondent company are freezed therefore respondent's right to sell the unsold inventories in the project is vanished which tantamount to discontinuation of business. Also, the authority vide letter no. HARERA/GGM/PA/SECY/2024/3 dated 26.04.2024 sent recommendation to the state government for detailing out the modalities and adopting further course of action for completion of remaining development works in terms of section 8 of the Act, 2016.

16. The authority considering the above mentioned facts opines that although the due date of possession has not lapsed. However, 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 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:.....”

17. 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 ₹2,62,000/- 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:

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):
- The respondent /promoter is directed to refund the amount i.e., ₹2,62,000/- received by it along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate

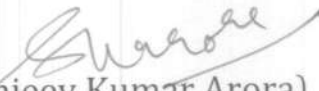
(Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

- 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.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.05.2024

HARERA
GURUGRAM