

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

Complaint no.: 5349 of 2023
Date of decision: 28.08.2024

Mr. Dayachand
R/o: 216, Jatav Mohalla, Bharthal Village,
South west Delhi.

Complainant

Versus

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

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Dinesh Kumar Dakoria (Advocate)

None

**Complainant
Respondent**

ORDER

1. The present complaint 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-95"
2.	Project location	Village Dhorka, Sector-95, Gurugram.
3.	Nature of project	Affordable group housing
4.	Area of project	10.44375 acres
5.	HRERA registered/ not registered	Registration revoked
6.	Dtcp License	License no. 24 of 2020
7.	Allotment letter	03.12.2021 (As per Annexure-P-4 on page no. 35 of complaint)
8.	Flat Buyer's Agreement	Not executed
9.	Unit no.	T3-1404, Floor-14 th , Tower-T3 (As per Annexure-P-4 on page no. 35 of complaint)
10.	Possession clause	<i>Not available</i>

11	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)
12	Date of environmental clearance	27.04.2022 (As per the website of SEIAA, Haryana)
13.	Due date of possession	27.04.2026 [Calculated 4 years from the date of E.C]
14.	Total sale consideration	Not known
15.	Amount paid by the complainant	Rs.6,63,197/- (As per bank statement on page no. 37-38 of complaint)
16.	Refund request	06.05.2022 (As on page no. 41 of complaint)
17.	Acceptance of refund request by respondent	06.05.2023 (As on page no. 46 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

1. That the respondent launched an Affordable Group Housing Colony under the name "Mahira Homes 104" Village-Dhanwapur, Sector-104, Gurugram on the area measuring 10.44375 acres

under the license no. 66 of 2021 dated 07.09.2021. It is relevant to mention herein that the said license was granted to the respondent by the DGTCP Haryana under the Affordable Housing Policy, 2013 issued by the Government of Haryana under the provisions of Section-9A of the Haryana Development & Regulation of Urbans Area Act, 1975.

- II. The complainant submitted a booking application form alongwith booking amount of Rs.1,29,299.40/- for the allotment of 2BHK+Utility Type 1 flat having carpet area measuring 643.66 sq. ft. in the aforesaid affordable group housing project. The booking amount was duly accepted and acknowledged by the respondent vide application receipt no. 16569 dated 30.10.2021.
- III. After conducting the draw of lots, the respondent allotted unit no. T3-1404, on 14th floor, Unit Type 2BHK+Utility Type-1 in Tower 3 vide allotment letter dated 03.12.2021 to the complainant.
- IV. The respondent received a total sum of Rs.6,63,197.47/- against registration fee and booking amount from the complainant in the following manner Rs.5,33,898.07/- vide Cheque no. 634222 dated 18.12.2021, Rs.590/- vide online transaction no. DP46792 dated 30.10.2021 & Rs.1,28,709.40/- vide online transaction no. DP46804 dated 30.10.2021 as per payment plan.
- V. That due to some financial commitments and adverse situation, the complainant moved an application in the office of respondent for cancellation of the aforesaid booking of the flat. The complainant also furnished an affidavit dated 06.05.2022 on the

format as given by the respondent and the same were duly received and acknowledged by the respondent.

- VI. That as per instructions of the respondent, the complainant handed over all the documents to the respondent as per its check-list for cancellation of flat. Upon receiving on all the original documents from the complainant pertaining to the aforesaid flat, the officials of respondent duly acknowledged the receipt of original documents.
- VII. The complainant sent an email dated 13.05.2022 to the respondent for seeking the confirmation of refund amount and time limit thereof. The respondent replied the complainant through email dated 19.05.2022 stating that please be informed that we are working on your request and we will update you soon.
- VIII. Vide email dated 20.05.2022, the respondent sent the calculation sheet of refund amount after deduction, wherein the respondent confirmed the refund amount of Rs.6,02,136/- after deducting the cancellation charge as Rs.25,000/-, Rs.26,246/- as 1% of total cost of property and Rs.9,224/- as 18% GST from the total received amount. The respondent further confirmed in the said email that the refund will take 120 days from the date of cancellation of document submission. It is submitted that the date of submission of cancellation document is 11.05.2022.
- IX. The complainant made several telephonic calls to the respondent requesting to refund his amount. On which, the respondent sent an email dated 06.05.2023, wherein it was confirmed by the respondent "please be informed that you may collect your refund

Cheque on 15.06.2023. When the complainant visited in the office of respondent on 15.06.2023 and waited on the reception about 3 hours, but neither the cheque handed over nor any response given to the complainant.

- X. The complainant again made several repeated telephonic calls to the respondent requesting to refund his amount. On which, the respondent sent an email dated 16.06.2023 stating that "please be inform that due to some unavoidable circumstances we are unable to release your cheque on the given date. Request you to please collect your refund cheque on 28.06.2023.
- XI. That as per Haryana Real Estate (Regulation & Development) Rules, 2017, it is mandatory to the promoter to return the amount within 90 days from the date of cancellation, however the amount of complainant has not been returned by the respondent till date despite expiry of the substantial period more than 1 years 5 months, which clearly shows that the respondent builder is involved in unfair practice and irregularities. The act and conduct of the respondent builder is the clear cut violation of the terms and conditions of the approval given by the HRERA, Gurugram for which the registration of the project of respondent builder is liable to be revoked under section 7 of the Haryana Real Estate (Regulation and Development) Act, 2016.
- XII. The complainant is having no other alternate remedy but to approach the Authority for seeking the appropriate directions against the respondent to refund the amount alongwith interest and further to initiate appropriate proceedings for revocation of

the registration of the project as per the provisions of the Act.
Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the amount paid with interest in respect of the allotted unit with interest at the prescribed rate.
 - b. Direct the respondent to pay Rs.2,00,000/- towards mental agony and harassment.
 - c. Direct the respondent to pay Rs.1,00,000/- towards the litigation charges.

D. Reply by the respondent

5. The present complaint was filed on 15.11.2023 and registered as complaint no. 5349 of 2023. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. On 15.02.2024, the counsel for the respondent file memo of appearance. The respondent was directed to file reply in the registry, subject to cost of Rs.2,000/-. The respondent neither filed reply not paid the cost imposed on it. Thus, vide proceedings dated 22.05.2024, the defence of the respondent was struck off.
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 Direct the respondent to refund the amount paid with interest in respect of the allotted unit with interest at prescribed rate.

13. The complainant applied for the allotment in the affordable housing project i.e., "Mahira Homes-104" located in sector-104, Gurugram being developed by M/s Czar Buildwell Pvt. Ltd. The respondent issued an allotment letter dated 03.12.2021 in favor of the complainant and thereby intimated to the complainant about the allotment of unit no. T3-1404 in Tower-T3 and the complainant made a payment of Rs.1,28,709/- on account of application fees. On knowing about the status of the project, the complainant requested the respondent to refund the application fees paid by the complainant as he wanted to withdraw from the project.
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 frozen by the authority due to non-compliance of the provisions of the Act, 2016. Finally on 06.09.2023 the authority initiated suo-moto 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 sell the unsold inventories in the project and also, the accounts are frozen 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 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 vide order dated 11.03.2024 the registration certificate of the project stands revoked 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 serious violations, there seems no possibility of completing the said project by the due date. Thus, 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 Rs.6,63,197/- received by it along with interest at the rate of 11.10% 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 realization of the amount.

F.II. Direct the respondent to pay Rs.2,00,000/- towards mental agony and harassment and Rs.1,00,000/- towards litigation charges.

17. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating

Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

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):
 - a. The respondent /promoter is directed to refund the amount i.e., **Rs.6,63,197/-** received by it along with interest at the rate of 11.10% 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.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.08.2024