

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

Complaint no.:	3684 of 2023
Date of decision:	24.07.2024

Sh. Sanjay
R/o: - House no. 35, Floor-3rd,
Mohammad pur, Near Bhikaji Cama Place,
New 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. Sanjay (Complainant in person)

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-104"
2.	Project location	Village Behrampur, Sector-104, 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. 66 of 2021
7.	Allotment letter	03.12.2021 (As on page no. 15 of complaint)
8.	Flat Buyer's Agreement	03.02.2022 (As on page no. 18 of complaint)
9.	Unit no.	T6-1104, Unit Type-2BHK + Utility-Type-1, Floor-11, Tower-T6. (As per page no. 15 of complaint)
10.	Unit area admeasuring	636.66 sq.ft. [Carpet-Area] (As on page no. 21 of complaint)

11.	Possession clause	<p>Clause 4. POSSESSION</p> <p>A. <i>Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Apartment to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environmental clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i></p> <p><i>[Emphasis's supplied]</i> <i>(As on page no. 27 of complaint)</i></p>
12.	Date of Building plan approval	<p>25.10.2021</p> <p>(As per the information provided by the respondent on website at the time of registration of project)</p>
13.	Date of environmental clearance	<p>27.04.2022</p> <p>(As per the website of SEIAA, Haryana)</p>
14.	Due date of possession	<p>27.04.2026</p> <p>[Calculated 4 years from the date of E.C]</p>
15.	Total sale consideration	<p>Rs.26,50,886/-</p> <p>(As on page no. 23 of complaint)</p>

16.	Amount paid by the complainant	Rs.6,62,607/- [Rs.5,33,898/-+ (Application fees)]	Rs.1,28,709/-
17.	Request seeking refund	05.06.2022	
18.	Occupation certificate	Not obtained	
19.	Offer of possession	Not offered	

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent is a Company working in field of construction and development of residential as well as commercial projects across the country in the name of M/s CZAR Buildwell Pvt Ltd. That the real estate project named "Mahira Homes-104", which is the subject matter of present complaint, is situated at Sector-104, District Gurugram. That the project is an affordable housing project.
- II. That in 29.10.2021, the respondent through its marketing executives and advertisements done through various medium approached the complainant with an offer to invest and buy a flat in the project, which they were going to launch the project namely "Mahira Homes-104" on Sector-104, Gurugram.
- III. That the allotment of the flat was to be done through a draw process and the complainant applied for the same on 29.10.2021 by paying an Application fees of Rs.1,28,709/- before Department of Town and Country Planning, Government of Haryana.

- IV. Thereafter, the complainant got selected in the draw and was allotted with a unit bearing no. T6-1104, Type-2BHK+Utility, Type-1 on 11th floor in Tower T-6, vide allotment letter dated 03.12.2021.
- V. That the respondent assured the complainant that it would execute the Flat Buyer Agreement at the earliest and maximum within one week. However, the respondent did not fulfill its promise and the same was not executed as agreed.
- VI. Upon the regular follows up of the complainant, the respondent had executed an allotment letter dated 03.02.2022 allotting the aforesaid flat in favour of the complainant. Thereafter, the respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainant as per agreed timelines. That the complainant has paid as on date Rs.5,33,898 + Rs.1,28,709 (application fees) to the respondent towards the total sale consideration i.e. Rs.26,24,640/-.
- VII. That in the month of June 2022, the complainant, approached the respondent to refund the money which was paid towards the sale consideration as he was not willing to proceed with his booking for which the respondent agreed and handed him a form titled as checklist for cancellation and directed the complainant to submit the same with the accompanying documents.
- VIII. That the complainant did the same and submitted the application for refund on 05.06.2022. That thereafter, the respondent, as per its assurance did not refund the money and started ignoring him by giving lame excuses and made the complainant run from pillar to post to get his money.



- IX. That from 15.06.2022 till today, it has been almost 1 years and 2 months, the respondent has not refunded the money as per its assurance, neither provided any satisfactory response to the complainant and misappropriated the money of the complainant.
- X. That the conduct on the part of the respondent regarding delay in processing of refund has clearly manifested that the respondent never ever had any intention to deliver the unit on time as agreed. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat basis its false and frivolous promises.
- XI. That the cause of action accrued in favor of the complainant and against the respondent on 15.06.2022, when the complainant had submitted the application for refund of the said flat and is still subsisting on day-to-day basis as the respondent has still not processed the refund.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- a. To direct the respondent to refund the amount paid 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 05.09.2023 and registered as complaint no. 3684 of 2023. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. On 30.11.2023 the counsel for the respondent appeared and filed memo of appearance and requested for a short adjournment for filing the reply. The request was allowed and was directed to file



reply within one week i.e., by 07.12.2023 in the registry, failing which cost of Rs.5,000/- would be imposed on the complainant. Again, during proceedings dated 03.04.2024, the Authority again directed the respondent to file reply within three weeks and an additional cost of Rs.5,000/- was imposed on the respondent. The respondent neither filed reply not paid the cost imposed on it. Thus, vide proceedings dated 24.07.2024, the defence of the respondent is 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 vide allotment letter dated 03.12.2021 was allotted a unit bearing no. T6-1104 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 ₹6,62,607/-.
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:....."

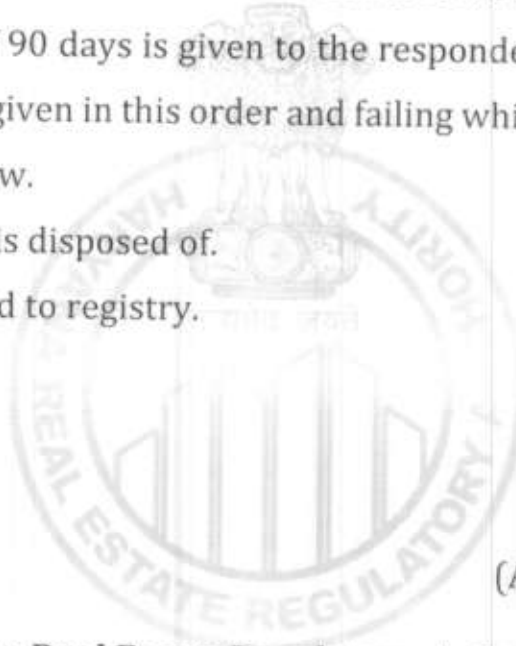
16. The Authority is of the view that since vide order dated 11.03.2024 the registration certificate of the project stands revoked under section 7(1) of the Act, 2016 therefore, the promoter cannot carry out the business in presence of the said circumstances, also due to the promoter's serious violations, 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.6,62,607/- received by it along with interest at the rate of 11% 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.

G. Directions of the authority:

17. 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.6,62,607/-** received by it along with interest at the rate of 11% 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.
18. Complaint stands disposed of.
19. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.07.2024

HARERA
GURUGRAM