

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

**Complaint No.:** 4344 of 2023  
**Date of filing:** 19.09.2023  
**Date of decision:** 19.09.2024

Ravina Satwani

**R/O:** - W/o Mr. Mohit Basantani H. No. 76, Gali No. 5,  
Sheetla Colony, Gurgaon, Haryana-122001

**Complainant**

Versus

M/s Czar Buildwell Pvt. Ltd. & Ors.  
**Regd. Office at:** - 301 & 302-A, Global Foyer, Sector-43,  
Golf Course Road, Gurgaon-122009

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Pankaj Yadav (Advocate)  
Shri Rishabh Gupata (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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 there under 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 Complainant date of proposed handing over the possession, delay period, if

*A* 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	<b>Registration revoked</b>
6.	DTCP License	License no. 24 of 2020
7.	Allotment letter	08.12.2020 (Page no. 43 of complaint)
8.	Flat Buyer's Agreement	16.03.2021 (Page no. 48 of complaint)
9.	Unit no.	T3-805, 8 <sup>th</sup> Floor, Tower-T3 (Page no. 49 of complaint)
10.	Possession clause	<b>4. Possession</b> <i>A. 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 Agreement, including but not limited to timely payment of instalments 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 years from the date of approval of building plans or grant of environment clearance, whichever is later.</i>

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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	26,23,112/- (As on page no. 52 of complaint)
15.	Amount paid by the complainant	Rs.16,55,837/- (As per SOA on page no. 90 of complaint)
16.	Refund request	05.12.2022 (As on page no. 106 of complaint)
17.	Acceptance of refund request by respondent	04.01.2023 (As on page no. 109 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: -

- a) That on 26.09.2020 the complainant came across Mr. Ashish Aghi, who told about the upcoming project of Mahira Homes Group (M/s Czar Buildwell Pvt. Ltd.) and created a rosy picture about the company and its project namely "Mahira Homes-95" and assured complainant that investing their

hard-earned money in the said project would certainly fulfill their dream of owning a house in Gurugram.

- b) That on same day the said Ashish Aghi took complainant and her husband to the office of MAHIRA GROUP. The respondent company M/s Czar Buildwell Pvt. Ltd. is a sister/group company of Mahira Homes Group having its address at 301 & 302-A, Global Foyer building, sector-43, Golf Course Road, Gurugram. Here he arranged a meeting with one Mr. Sikandar Singh alias Sikandar Chhoker who introduced himself as the Chairman cum Director of Mahira Homes Group. Mr. Sikander Chhoker stated that they are in the business of real estate development since long and are Coming up with a new project namely "Mahira Homes-95" for which they have completed all the formalities and have acquired land and have obtained necessary permissions and licenses from the govt. Mahira Homes being the ultimate controller is having complete command and control on day-to-day operations of all its Group companies and is the ultimate and sole beneficiary of the projects and finances running under its umbrella is therefore a necessary and proper party for fair and just adjudication of the matter.
- c) That on 27.09.2020 the said Akash Aghi took complainant and her husband to the respondent company's office where respondent company director Mr. Sikander Chhoker and his employees gave presentation of the project "Mahira Homes- 95" and told complainant that they are coming up with this abovesaid project under the Governments affordable housing scheme which is situated at a very prime location i.e., Sector 95, Gurugram. They further stated that the project has all the good amenities and has good connectivity. And they asked complainant and her husband to fill their application form along with an advance amount of Rs. 1,31,000/-. They also showed complainant and her husband the documents purporting to be

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documents of land purchased on which the project is planned and documents of various Authorities of Government about necessary permissions and licenses. Believing their word to be true the complainant applied for the same and also gave check of Rs. 1,31,000/- (which was cleared on 14.10.2020) in favor of the respondent company M/s Mahira Homes 95 on dated 27.09.2020.

- d) That on 08.12.2020 the complainant was informed about the allotment of "Flat No. T3-805 at Mahira-95, Sector-95, Gurugram" thereafter on the very same day complainant and her husband visited the office of M/s Mahira homes at Global Foyer, there they received an allotment letter dated 08.12.2020. Further, 13.03.2021 a Builder Buyer Agreement (BBA) was signed/executed between complainant and respondent company.
- e) When for more than two years the project did not start the complainant and her husband started making inquiries about the project and told by locals the land does not belong to M/s Czar Buildwell Pvt. Ltd. or to any other sister concern of the respondent persons. The complainant confronted the respondent company and Mr. Sikander Choker a number of times, about the facts but they always remained evasive. Being fed-up with the evasive and non-professional approach of the respondents the complainant and her husband decided to cancel the booking and accordingly wrote an email to the respondent company dated 05.12.2022 to that effect.
- f) That the respondent company assured to refund the amount paid by complainant and fixed various dates for refund but never honored their promise. Till date the complainant has paid a total amount of Rs. 16,55,837/- to the respondent company. This money was complainants' life time savings, which the respondent company took from them on false promises and by showing forged documents therefore they cheated complainant and her husband of the amount of Rs. 16,55,837/- .

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- g) It has also come to the knowledge of the complainant that the company M/s Czar Buildwell Pvt. Ltd. as registered with RERA does not exist and is a forged entity. In fact, the respondents have played a fraud upon the complainant as well as on the Hon'ble HARERA by wrongly claiming so. In fact, the CIN Number U70109HR2017PTC069536 as reflected on the site of HARERA is that of M/s Mahira Buildwell Pvt. Ltd and no company by the name of M/s Czar Buildwell Pvt. Ltd is available on the official website of Registrar of Companies.
- h) It is therefore humbly prayed that the respondents be held jointly and severally liable to refund the amount of Rs. 16,55,837/- along with interest thereon. It is also requested to take a strict action against the respondents by lodging a FIR under appropriate sections of the IPC and other relevant law. It is also requested to order a forensic audit of the accounts of all the Mahira Group of companies to know the real beneficiary and to ascertain the trail of the money so deposited.

**C. Relief sought by the complainants.**

4. The complainants have sought following relief:
- Direct the respondent to refund the total amount paid i.e., Rs. 16,55,837/- by the complainants along with the prescribed rate of interest.

**D. Reply by the respondent.**

5. The respondent contested the complaint on the following grounds: -
- That present complaint was filed on 19.09.2023 and registered as complaint no. 4344 of 2023. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. on 20.09.2023. The counsel for the respondent file Vakalatnama dated 07.12.2023. The respondent was directed to file reply in the registry, subject to cost of Rs.5,000/-. The respondent neither filed reply nor paid the cost

imposed on it despite adequate opportunity. Thus, vide proceedings dated 19.09.2024, the defence of the respondent was struck off.

- b) 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 on the basis of these undisputed documents and submission made by the parties.

### **E. Jurisdiction of the authority**

6. 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**

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

9. 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 complainants at a later stage.

10. 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*** 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."*

11. 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. (supra)***, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Finding 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.**

12. The complainant was allotted a unit no. T3-805 on 8<sup>th</sup> floor, in tower/block-T3, in the project "Mahira Homes-95" by the respondent/builder for a total consideration of Rs. 26,23,112/- under the Affordable Group Housing Policy





2013. Buyer's agreement was executed between the parties on 16.03.2021. The possession of the unit was to be offered with 4 years from approval of building plans (25.10.2021) or from the date of environment clearance (27.04.2022) whichever is later. The due date of possession was calculated 4 years from date of approval of environment clearance i.e., 27.04.2022, as per policy, of 2013. Thus, the due date of possession comes out to be 27.04.2026. The complainant paid a sum of Rs.16,55,837/- out of the total sale consideration. Further, the complainant has surrendered the unit before the due date of possession vide email dated 05.12.2022, at page no. 105 of the complaint which is reproduced as under for a ready reference:

*"With due regard I want to inform you that I want to cancel my flat purchase for unit T3-805 sector-95 having customer ID- MH95-M2444, since no development has been seen on site even after my frequent visits. So, I have decided to discontinue with the unit allotted to me.*

*.....  
Also please clarify that in how many days the remaining amount after deduction will be credited to our bank account??And please clarify our primary bank account registered with you where this remaining amount is going to be credited?"*

13. 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 on the basis of 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

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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 were frozen therefore, this may decode as discontinuation of business.

14. The Authority considering the above mentioned facts opines that the surrender request made by the complainant before revocation of the registration certificate and the complainant is entitled to refund the amount as per affordable group housing policy, 2013. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

**Clause 5(iii) (h) of the Affordable Housing Policy**

*"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -*

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

*Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30*

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*days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots".*

15. Since the surrender of the unit by the complainant was done after commencement of construction i.e., 4 years from date of approval of environment clearance i.e., 27.04.2022, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 27.04.2022 is later and hence, the same would be considered as date of commencement of project.
16. Accordingly, the respondent is entitled to forfeit 1% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 and the request for surrender is within 1 years from the date of commencement of project.
17. The respondent/promoter is directed to refund the paid-up amount after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @11.10% per annum on such balance amount from the date surrender/withdraw of allotment (inadvertently mentioned as from the date its deposit in the proceeding dated 19.09.2024) till the actual realization of the amount.

**G. Directions of the Authority**

18. Hence, the authority hereby passes this order and issues 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 paid-up amount by the complainant(s) after making statutory deductions of 1% of the consideration money in addition to Rs.25,000/- along with interest on such balance amount from the date of surrender till the date of actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).
- II. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.
- III. The respondent is also directed to retain in safekeeping the original documents of the allottee, including the letter of allotment, the welcome letter, and the builder-buyer agreement, until the full and final realization of the amount to be refunded.
- IV. A period of 90 days is given to the respondents 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.

**Dated: 19.09.2024**

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram