

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

Complaint no.: 3950 of 2023
Date of decision: 13.11.2024

Mr. Sonu Aggarwal
R/o: SCF-104, Tower-F, The Skycourt,
Sector-86, Guurugram-122004.

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. Saurabh Aggarwal
None

**Complainant
Respondent**

HARERA
ORDER
GURUGRAM

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", Sector-104, Gurugram, Haryana.
2.	Nature of the project	Affordable Housing Scheme Project, Multistoried Towers.
3.	RERA Registered/ not registered	Registration revoked
4.	DTCP License	66 of 2021 dated 07.09.2021 valid up to 06.09.2026
5.	Welcome letter	04.12.2021 (As on page no 18 of the complaint)
6.	Allotment letter	03.12.2021 (As on page no. 19 of complaint)
7.	Unit no.	T6-207, Floor-2, Tower-T6 (As on page no 19 of complaint)
8.	Unit area	642.36 sq.ft. [Carpet-Area]

		(As on page no. 19 of complaint)
9	Environment clearance	27.04.2022 (As per website of SEIAA, Haryana)
10.	Builder-Buyer's Agreement	Not executed
11.	Possession clause	<p><i>In the absence 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 purposes of this policy. The license shall not be renewed beyond the said 4 years period from the date of commencement of project.</i></p>
12.	Due date of delivery of possession	27.04.2026 [Calculated 4 years from the date of E.C]
13.	Total sale consideration	Rs.26,45,634/- (As on page no. 20of complaint)
14.	Amount paid by the complainant	Rs.6,61,400/-
15.	Occupation certificate /Completion certificate	Not obtained

16.	Offer of Possession	Not offered
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B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. 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. That the complainant applied for 3 BHK flat under the affordable housing scheme in the above mentioned project launched by the respondent on 29.10.2021 and succeeded in allotment of 3 BHK flat in Tower T6and unit no. T6-207 was allotted to the complainant. The complainant deposited 25% amounting to Rs.6,62,607/- as per the terms and conditions but no construction has been started at the project site till date.
- III. The complainant came to know through news and media that the respondent is involved in frauds with bank and customers. Thus, the complainant decided to cancel the booking of the unit allotted to him on 30.09.2022 and submitted all the documents. The complainant requested to cancel the unit and refund the amount paid by the complainant.

- IV. That from October 2022 till August 2023, the complainant sent several mails to the respondent regarding the status of refund but the respondent did not refund the amount and kept on delaying the refund. That till date, the complainant has made a payment of Rs.6,61,400/- against the total sale consideration of Rs.26,45,634/- .
- V. The complainant has been requesting for refund from the last one year but till now have not received the amount. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the amount paid with interest in respect of the allotted unit with interest at the prescribed rate.
 - Direct the respondent to pay Rs.25,000/- towards the litigation charges.
 - Direct the respondent to pay Rs.25,000/- for mental harassment.
5. The present complaint was filed on 05.09.2023 and registered as complaint no. 3950 of 2023. As per the registry, complainant has sent copy of the complaint along with annexures through speed post as well as through email. The respondent did not appear on 12.10.2023 but appeared on 30.11.2023 but did not file reply. Vide the said proceeding dated 30.11.2023, the respondent was directed to file reply within a period of one week along with cost of Rs.5,000/- . The respondent was again given an opportunity to file reply on 03.04.2024, 03.07.2024. Vide proceedings dated 04.09.2024, the defence of the respondent was struck off. However, in the interest of

justice, the respondent was given a final opportunity to appear and argue the matter, but the respondent neither appeared nor filed reply.

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.

D. 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.

E. 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 the respondent i.e., 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. T6-207 on 2nd floor in Tower-T6. On knowing about the status of the project, the complainant requested the respondent to refund the amount 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 M/s. 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. 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 freezed therefore, this amounts to discontinuation of business of the respondent.

15. The Authority considering the above mentioned facts opines that although the due date of possession has not lapsed yet, 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.6,61,400/- 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.25,000/- towards litigation charges.

F.III. Direct the respondent to pay Rs.25,000/- towards mental harassment

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.


F. 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.6,61,400 /-** 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 realisation 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: 13.11.2024



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