

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

Complaint no.: 2035 of 2023
Date of decision: 21.01.2025

Mr. Ravinder Singh

R/o: Village Wazirpur (115), Sub-Tehsil Harsaru,
District- Gurugram -122505.

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 Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Archana Chauhan (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. No.	Particulars	Details
1.	Name of the project	Mahira Homes Sector 95, Village Dhorka, Sector- 95, Gurugram
2.	Nature of the project	Affordable group housing colony
3.	DTCP license no.	Not on record
4.	Registration details	Revoked vide order dated 11.03.2024 by the Authority.
5.	Allotment letter dated	08.12.2020 [Page no. 17 of compliant]
6.	Unit no.	T3-1302, tower-T3, 13 th floor, (Page no 17 of complaint)
7.	Area admeasuring	643.28 sq. ft. carpet area (Page no 17 of complaint)
8.	Date of builder buyer agreement	Not executed
9.	Possession clause as per buyer's agreement	N.A
10.	Possession clause as per policy, 2013	1(IV) of the Affordable Housing Policy, 2013 <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 licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
11.	Due date of possession	27.04.2026 (Note:- 4 years from the date of environment clearance)
12.	Basic sale consideration	Rs.26,49,344/- [As per statement of account at pg. 26 of

		complaint]
13.	Paid up amount	Rs.13,24,336/- [As per statement of account at page no. 26 of complaint]
14.	Building plan approval dated	25.10.2021 (As per the information provided by the respondent on website at the time of registration of project)
15.	Environment clearance dated	27.04.2022 (As per the website of SEIAA, Haryana)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Demand notice/tax invoice	03.11.2021 (Page no. 18 of the complaint)
19.	Cancellation notice	08.12.2021 (Page no. 25 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That, in the year 2020, the respondent through marketing executives had advertisement done through various medium and means including but not limited up-to print, electronic media etc. approached the complainant with an offer to invest and buy an residential unit in the proposed project of respondent, which respondent was going to launch the project under the name and style of "MAHIRA HOMES" 95, at Sector-95, Village Dhoraka, Gurugram, Haryana-122005. The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of residential, commercial and IT projects and in case, the complainant invests in the project of respondent then they would deliver the possession of proposed apartment on the assured delivery date as per the best quality assured by the respondent. The



respondent had further assured the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer's agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing those to be true had agreed to the proposal of the respondent to book a residential unit in the project of respondent.

- II. The respondent arranged the visit of its representatives to the complainant and they also assured, the same as assured by the respondent, to the complainant, wherein it was categorically assured and promised by the respondent that they already have secured all the sanctions and permissions from the concerned Authorities and Departments for the sale of the said project and would allot a unit in the name of complainant immediately upon booking. Relying upon those assurances and believing those to be true, the complainant booked a in the project of the respondent. It was further assured and represented to the complainant by the respondent that they had already taken the required necessary approvals and sanctions from the concerned Authorities and departments to develop and complete the proposed project within time as assured by the respondent.



- III. That, at the time of approaching the complainant, it was represented, assured and promised by the respondent that it would issue allotment letter in the name of complainant within a maximum period of one week from the date of draw of lots and thereafter, shall also execute the builder buyer's agreement as a confirmation of the allotment of the unit.
- IV. That, it is not out of place to mention here that by believing upon the offer of respondent as genuine and trusting the respondent, the complainant booked a flat in the said residential project, consequently, paid a sum of Rs.1,31,000/- as booking amount through cheque bearing no. 586408 drawn on Syndicate Bank (now Canara Bank), branch at Wazirpur, Gurugram. The respondent has allotted the said unit to the complainant through allotment letter dated 08.12.2020. Even after many requests made by the complainant, the respondent has neither executed any agreement for sale in terms of the Act, 2016 and the Rules, 2017 nor had shown any interest in executing the agreement for sale in favour of the complainant.
- V. From the date of booking and till today, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of the said unit and complainant has duly paid and satisfied all those demands without any default or delay on his part and also fulfilled otherwise also his part of obligations but the respondent having fraudulent intention issued the cancellation notice even after having received Rs.13,24,336/- from the complainant showing rosy pictures. He stood shocked and astonished when he received a cancellation notice dated 08.12.2021,



whereby the respondent alleged that it has published a cancellation notification in the daily newspaper "Punjab Kesari on 09.12.2021.

- VI. That the said cancellation notice dated 08.12.2021 is nothing but a tactic to hide their misdeeds, as the respondent miserably failed to handover the possession of the said unit to the complainant even after his repeated requests made by the complainant. Though the respondent was obligated to handover the peaceful possession of the said unit to the complainant within 36 months from the date of application with a grace period of 6 months and the respondent instead of handing over the possession of the unit has issued the cancellation notice dated 08.12.2021 to the complainant. The allegations so being labeled in the notice dated 08.12.2021 that in spite of repeated request made by the respondent, the complainant did not make the payment, had there been any default in making payment on the part of the complainant, then as to why complainant would have paid the amount of Rs.13,24,336/- to the respondent and it is clear as crystal that the respondent in order to cover-up his misdeeds has not only issued the said cancellation notice dated 08.12.2021, but also has acted in utter contravention of the Act of 2016 especially section 18 of the Act, 2016 read with the Rules, 2017. Moreover, the respondent never cared to listen to her grievances and left her with the suffering and pain on account of default and negligence on the part of respondent. Further, as per the statement of accounts, issued by the respondent, the complainant as on 23.03.2023 has paid an amount of Rs.13,24,336/- to the respondent.



- VII. Due to failure of commitment on the part of respondent has made the life of complainant miserable socially as well financially as all his personal financial plans and strategies were based on the said unit. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured him to buy a unit in the aforesaid residential project of the respondent. The respondent trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering his dream home within deadline representing itself as a multinational real estate giant. The respondent even has not replied the correspondence including but not limited to telephonic conversation etc. whenever, complainant tried to reach at the desk of respondent, the respondent and its staff and officials always evaded the complainant on lame excuses and resultantly has cancelled the unit of the complainant.
- VIII. That the complainant suffered a great mental, physical and financial harassment just because of unwarranted and illegal act of the respondent, for which respondent rendered itself liable to be prosecuted under the relevant laws. Due to above-stated acts of the respondent, the complainant had to undergo huge financial loss, mental pain and agony as well which has made complainant to incur a huge cost and the respondent solely and exclusively is liable to indemnify the just and legal claim of the complainant
- IX. That the cause of action accrued in favour of the complainant and against the respondent, when complainant had booked the said unit,

it further arose when respondent failed/neglected to execute agreement for sale. The cause of action further accrued to the complainant, when complainant through various modes requested the respondent to refund the amount, already paid by the complainant. It further accrued when respondent illegally, unlawfully and arbitrarily has cancelled the unit on the basis of its whims and fancies. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the entire paid-up amount of Rs.13,24,336/- along-with interest to the complainant;
 - b. Direct the respondent to pay the interest on the aforesaid amount at the rate of 18% per annum to the complainant.
 - c. Direct the respondent to pay litigation cost of Rs.1,00,000/-.
5. The present complaint was filed on 01.05.2023. On 05.12.2023, Shri Rishabh Gupta Advocate, appeared on behalf of the respondent and filed memo of appearance and requests for a sought short adjournment for filing of reply. The said request was allowed, and the respondent was directed to file the reply within stipulated time period. Despite specific direction it has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the Authority by avoiding filing written reply. In view of the conduct of the respondent, on 24.09.2024, the authority is left with no option but to striking off the defence of the respondent.
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.

D. 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.

D. 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:

E.I Direct the respondent to refund the entire paid-up amount of Rs.13,24,336/- along-with interest to the complainant;

E.II Direct the respondent to pay the interest on the aforesaid amount at the rate of 18% per annum to the complainant.

13. The complainant applied for the allotment in the affordable housing project i.e., "Mahira Homes-95" located in sector-95, Gurugram being developed by the respondent i.e., M/s Czar Buildwell Private Limited. The respondent issued an allotment letter dated 08.12.2020 in favor of the complainant and thereby intimated to the complainant about the allotment of unit no. T3-1302, tower-T3, 13th floor in the project of the respondent at the sale consideration of Rs.26,49,344/-. He has paid a sum of Rs.13,24,336/- towards the subject unit. The possession of the unit was to be offered within 4 years from the approval of building plans (25.10.2021) or from the date of environment clearance (27.04.2022), whichever is later, which comes out to be 27.04.2026 calculated from the date of environment clearance being later.
14. Upon perusal of documents and submissions made by the complainant, it has been found that allotment of the subject unit was cancelled by the respondent on 08.12.2021 due to non-payment. On 03.11.2021, the respondent raised a demand for an amount of Rs.3,31,334/-. The respondent vide letter dated 08.12.2021, cancelled the allotted unit of the complainant.
15. The Authority observes that as per cancellation letter dated 08.12.2021, the complainant was required to pay an amount of Rs.3,31,334/- on or before 23.12.2021. The complainant has paid an amount of Rs.3,30,833/- on 08.12.2021 and the same was admitted by the respondent in statement of account. Further, the respondent failed to fulfil the prerequisite of publishing the due notice in the daily newspaper. Therefore, the prescribed

procedure as per clause 5(iii)(i) of the policy of 2013 had not been followed by the respondent to cancel the unit of the complainant. In light of these findings, the cancellation of the allotment on 08.12.2021, is deemed invalid and hereby quashed as issued in bad faith. However, seeking the status of the project, the complainant wants to withdraw from the project and is seeking refund the entire paid-up amount along with interest.

16. It is pertinent to mention that the registration of the project stands revoked under section 7 of the Act 2016, by the Authority vide order dated 11.03.2024 on account of grave violations committed by the promoter. Accordingly, the respondent company shall not be able to sell the unsold inventories in the project and the accounts of the project are frozen.
17. 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 and the complainant is entitled for entire refund of the amount paid to the respondent along with the prescribed rate of interest. The relevant portion of section 18 is reproduced below:

"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:....."

18. Thus, the Authority is of the view that the complainant is entitled to his right under section 18(1)(b) read with 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.13,24,336/- 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.

E.II. Direct the respondent to pay Rs.1,00,000/- towards litigation charges.

19. 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:

20. 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., Rs.13,24,336/- 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.

21. Complaint stands disposed of.

22. File be consigned to registry.

(Ashok Sangwan)
Member

V.) 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.01.2025