

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

Complaint No.: 3315 of 2023
Date of filing: 08.08.2023
Date of decision: 23.01.2025

Manpreet Kaur

R/o: - Prithvi Homes, Plot No. 36, Flat No. 304, Surat
Nagar Phase 1, Sector 104, Gurgaon-122006

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:

Mr. Simarpreet Singh Bhatia (Authorized Person)
Shri Rishabh Gupta (Advocate)

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 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 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 Dhanwapur, Sector-104, Gurugram.
3.	Nature of project	Affordable group housing
4.	Area of project	10.44375 acres
5.	HRERA registered/ not registered	72 of 2021 dated 25.10.2021
6.	DTCP License	License no. 66 of 2021
7.	Application Receipt	16.11.2021 (Page 14 of complaint)
8.	Allotment Letter	04.12.2021 (Page 15 of complaint)
9.	Unit no.	T5-1708, Tower-T5 (Page 15 of complaint)
10.	Flat 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 which provides as under:</i></p> <p><i>Section 1(iv)</i></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. The 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</i></p>



		<i>from the date of commencement of the project.</i>
12.	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)
13.	Date of environmental clearance	27.04.2022 (As per the website of SEIAA, Haryana)
14.	Due date of possession	27.04.2026 (Calculated 4 years from the date of E.C.)
15.	Sale consideration	Rs. 26,47,420/- (As on page no. 11 of complaint)
16.	Amount paid by the complainant	Rs.6,62,722/- (As per receipts at page no. 16 of complaint)
17.	Refund request	14.07.2022 (As on page no. 18 of complaint)
18.	Acceptance of refund request by respondent	17.04.2023 (As on page no. 20 of complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That on dated 29.10.2021, the Respondent launched its new housing project namely "Mahira Homes 104" located at Village Dhanwanpur, Sector 104, District Gurugram 122101. The respondent No.1 launched the project on

the website of DTCP, Haryana and inviting the applications for allotment of the flat in the aforesaid project of the respondent.

- b) Believing the assurances and representations of the respondent the complainant on dated 11.11.2021 booked the residential unit in the said project of the respondent vide transaction id dp50830 and also paid the booking the amount that is Rs. 1,28,709.40/- excluding registration fee of INR 590 paid separately to the respondent. It is pertinent to mention here that the booking was made under 'Subvention Payment Plan'.
- c) On dated 04.12.2021 the respondent informed the complainant that the allottee had been successfully allotted the flat/apartment in the said project of the respondent. Therefore, the complainant allotted the unit bearing no. T5-1708 on 17th Floor in Tower T5 having super area of 643.66 sq. ft and the total amount of consideration of Rs. 26,47,320/- via allotment letter.
- d) On dated 05.12.2021 the respondent raised a demand of Rs. 6,62,722/- including already paid application fees of Rs. 1,28,709.40/- and further on dated 29.12.2021 the complainant made the payment to the respondent regarding the said unit of the flat/apartment. The respondent on dated 29.12.2021 generate the acknowledgement receipt of the allotment amount which was paid by the complainant regarding the allotted unit of the flat/apartment.
- e) Due to security issues the Hon'ble Authority had freeze the account of the respondent therefore due to such security issues the complainant on dated 14.07.2022 informed the respondent through email for cancellation of the above said allotted unit of the complainant and refund the amount of Rs. 6,62,722/- which was paid by the complainant to the respondent at the time of booking of the said unit in the said project of the respondent. Therefore, the complainant was not any more interested in the said project of the respondent as the respondent accounts freeze by the Hon'ble Authority.

- f) On dated 29.08.2022 the respondent informed the complainant to deposit back the physical copies of certain documents that were submitted by the complainant to the builder/respondent office. Further the complainant went to the office of the respondent and handed over the documents which was issued to the complainant regarding the allotted flat/apartment in the said project of the respondent and further the respondent states that they will refund the amount within 120 days.
- g) From august 2022 till April 2023 the complainant sent several mails to the respondent regarding the status of the refund amount which was pending before the respondent office but the respondent did not refund the amount on the said dates and they kept on delaying to refund the amount to the complainant therefore, the respondent was failed to give the refund amount to the complainant.
- h) Till date, the complainant has made a payment of Rs. 6,62,722/- - till date as against the total consideration of Rs. 26,47,320/- and seeking refund of that paid booking amount from the respondent but the respondent got failed to do the same. The complainant kept making calls to the respondent and visiting his office requesting them to refund back their hard-earned money so retained but the respondent always sought the time from the complainant regarding the refund amount but they never paid the same therefore, the respondent played the delay tactics so that not to refund the amount and harass the complainant from such deliberately tactics.
- i) The complainant has been severely exploited at the hands of the builder/respondent. The aforesaid series of events clearly portray the amount of harassment and mental agony the complainant has gone through right from the date of cancellation in December 2021 till date. the respondent not only failed to give booking amount back to the complainant but also gave false hopes and cooked false and frivolous stories thereby

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duping the complainants of their hard-earned money and causing them great mental trauma.

- j) The present complaint has been filed in order to seek refund of the amount of Rs. 6,62,722/- along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of payment till the date of refund, along with compensation for the mental stress and torture as well as financial and physical loss suffered by the complainant due to the fraudulent acts of the respondent company. Hence, this complaint.

C. Relief sought by the complainant.

4. The complainant has sought following relief:

- i. Direct the respondent to refund the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

D. Reply by the respondent.

5. The respondent contested the complaint on the following grounds: -

- a) That present complaint was filed on 08.08.2023 and registered as complaint no. 3315 of 2023. The authority issued a notice dated 23.08.2023 to the respondent by speed post and also on the given email address at INFO@mahiragroup.com. The counsel for the respondent file Vakalatnama dated 17.12.2023. The respondent was directed to file reply in the registry, subject to cost of Rs.5,000/-. The respondent neither filed reply not paid the cost imposed on it despite adequate opportunity. Thus, vide proceedings dated 23.01.2025, 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 complainant 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 amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

12. The complainant was allotted a unit no. 1708 in Tower-5, in the project “Mahira Homes-104” by the respondent/builder for a total consideration of Rs. 26,47,420/- under the Affordable Group Housing Policy 2013. Buyer’s agreement was not executed between the parties. 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.6,62,722/- out of the total sale consideration. Further, the complainant

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has surrendered the unit before the due date of possession vide email dated 14.07.2022, at page no. 18 of the complaint which is reproduced as under for a ready reference:

*"Since your team has not provided any clarity on your licence issue and neither department is providing clear details as what has been decided against your forged bank guarantees allegations.
I would like to cancel my unit T5-1708.
Please consider this as my official request and let me know when I will get my refund or what all you need from me."*

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 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 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., 1 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.

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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 till the actual realization of the amount.

G. Directions of the Authority

19. 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 complainant 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. 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.

20. Complaint stands disposed of.

21. File be consigned to registry.

Dated: 23.01.2025

V.I. Goyal
(Vijay Kumar Goyal)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram