

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

**Complaint no. :** 5082 of 2023  
**Complaint filed on:** 27.10.2023  
**Date of decision:** 07.02.2025

Shaurya Kataria  
R/O: 002, Ground Floor, Kohinoor Apartment,  
Sector 19, Dwarka, New Delhi-110075.  
Also at: A-25/12, deodar Marg, DLF, Phase-1,  
Gurugram, Haryana-122002.

**Complainant**

Versus

M/s Mahira Buildtech Pvt. Ltd.  
Regd. Office: 311, 3<sup>rd</sup> floor, Global Foyer Mall,  
Golf Course Road, Sector 43, Gurugram, Haryana-122009.

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Ms. Shriya Takkar And Ms. Smriti Srivastava (Advocates)

**Complainant**

None

**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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Mahira Homes" at Sector 103, Gurgram, Haryana
2.	Nature of the project	Affordable group housing colony
3.	Project area	5.4037 acres
4.	DTCP license no.	31 of 2019 dated 01.03.2019 Valid up to 28.02.2024
5.	RERA Registered/ not registered	Registration revoked by the Authority vide order dated 11.03.2024
6.	Allotment letter dated	01.07.2019 [Page 62 of complaint]
7.	Unit no.	403, 4 <sup>th</sup> floor, Tower F [Page 71 of complaint]
8.	Unit area admeasuring	570 sq. ft. (Carpet area) [Page 71 of complaint]
9.	Date of building plan approval	29.03.2019 [As per information provided by planning branch of the Authority]
10.	Environmental clearance dated	29.01.2020 [As per information provided by planning branch of the Authority]
11.	Execution of BBA	14.11.2019 [Page 68 of complaint]

12.	Possession clause as per Affordable Housing Policy, 2013	<b>1(IV) of the Affordable Housing Policy, 2013</b> <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>
13.	Due date of possession	29.07.2024 [Due date of possession is calculated from the date of environmental clearance i.e., 29.01.2020 being later + 6 months on account of COVID-19]
14.	Total sale consideration	Rs.23,53,300/- [As per SOA dated 15.05.2023 on page 103 of complaint]
15.	Amount paid by the complainant	Rs.23,53,300/- [As per SOA dated 15.05.2023 on page 103 of complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Refund request by the complainant	By virtue of present complainant filed on 27.10.2023

## B. Facts of the complaint

3. The complainant has made following submissions in the complaint:

- i. That pursuant to the receipt of the Application Form from the intending allottees, the respondent conducted a draw of lots for the allocation of the units on 01.07.2019 at Club Florence, Sector 56 Gurugram. Vide welcome letter, it was intimated that the complainant

was one of the successful applicants and was requested to visit the office of the respondent company to collect demand and allotment letter. Vide allotment letter dated 01.07.2019, the complainant was allotted a 2 BHK unit bearing no.403, 4<sup>th</sup> Floor in Tower-F of the Project "Mahira Homes 103", Sector 103 being developed under Affordable Housing Policy, 2013. The cost of the flat for carpet area admeasuring 570 sq. ft. was Rs.23,53,300/-. The complainant opted for the time-linked payment plan.

- ii. Thereafter, the complainant approached the officials of the respondent and requested them to execute the buyer's agreement. It is submitted that the second instalment was payable only on execution of the buyer's agreement. However, all requests of the complainant fell on deaf ears. Complainant thus, on the threat of levy of delayed interest by the respondent, was forced to make the payment of demand for an amount of Rs.4,73,336/-. It is relevant to mention here that the respondent collected more than 10% of the cost of the flat without entering into a buyer agreement and thus, the respondent violated section 13 of the Act. The respondent has collected an amount of Rs.5,88,326/- from the complainant prior to the execution of the Flat Buyer's Agreement which is approximately 25% of the total sale consideration which is more than 10% of the total sale consideration and against the provisions of the Act.
- iii. That as per clause 4 (A) of the Flat buyer's Agreement dated 14.11.2019, the respondent was liable to handover possession within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later. It is relevant to

note that the respondent had not disclosed the Environmental Clearance, therefore the complainant had no means to know about the date of Environmental Clearance for the project in question. It is submitted that the sanctioned plans were approved by the Department of Town and Country Planning on 28.03.2019. Thus, the respondent is liable to hand over the possession of the flat before 28.03.2023.

- iv. Thereafter in January 2021, the complainant visited the project site so as to ascertain the actual status of the project and the complainant was shocked to see that there was no development going on at the site. However, the officials of the respondent company assured that the project would be completed on time. The respondent continued to collect significant amount of money from the complainant despite being well aware that it was not in a position to deliver the project within the promised time of delivery.
- v. The complainant availed loan facility from Canara Bank. The loan facility for an amount of Rs.20,50,000/- was sanctioned vide letter dated 17.07.2019 at 8.6% interest. To the utter shock of the complainant, the Bank after disbursing a total of 5 instalments amounting to Rs.14,70,812/- refused to remit any further amount of the loan for the reason that there was no sign of development, and the progress was not at par with the Agreement. The complainant immediately visited the project site and found that there was no construction activity going on at the project site. The complainant rushed to the office of the respondent and met its official and informed them about the same. The officials of the respondent

- assured that the construction would be completed within the prescribed time period and asked the complainant to pay the remaining instalments to avoid cancellation of allotment. Having no option, the complainant paid the due amount vide bank transfer by borrowing funds from his friends/relatives.
- vi. That looking at the pace of construction, the complainant along with the other home buyers met Mr. Sikander Singh, Managing Director of respondent at their office on Golf Course Road and raised their concern regarding the delivery of the flats. It was specifically assured by Mr. Singh that the project would be delivered on time. The complainant believing the assurances to be true, made the payment of the last instalment vide bank transfer on 15.09.2022. Thus, by 15.09.2022 the complainant deposited the entire sales consideration of the flat being Rs.23,53,3000/- with the hope that the possession of the flat would be handed over within the agreed time limit by 28.03.2023.
- vii. The complainant had recently also visited the site and was shocked to see that the tower in which his allotted unit was to be constructed, was not constructed at all. It is relevant to note that there is no chance the complainant will get possession of the unit in question in the coming 4 years as the tower in which the unit in question is situated has been abandoned by the respondent.
- viii. That the respondent collected a significant amount of money from the complainant even when it was in no position to deliver the project and even till the date of the filing of the present complaint, there is only 15% of the construction which has taken place at the site.

- ix. The respondent company without obtaining a registration certificate issued an advertisement in the public domain, invited the application for allotment in the project in question. This Hon'ble authority took Suo moto cognizance of the malicious and wrongful act of the respondent and registered Complaint No. RERA-GRG-6052 of 2019 against the respondent and sought justification for their act. The respondent miserably failed to enter its appearance before the Hon'ble Authority despite repeated notice from the Hon'ble Authority and thereafter the Hon'ble Authority proceeded ex-parte against the respondent. Vide order dated 28.01.2021, the Authority passed the following directions: *"But on the date of the advertisement, the application for project registration was under process and RC was granted on 01.04.2019 i.e., within a week time after the advertisement. Hence the Authority has taken a softer view towards the promoter and decided to impose a penalty of Rs.10 lakhs on the promoter for violation of Section 3 (1) of the Real Estate (Regulation and Development) Act, 2016 which shall be deposited with the Authority and shall be credited in the government account within a prescribed period as per rules"*.
- x. The respondent has no fear of the law of the land and the said fact is absolutely clear from the fact that the respondent used a fake bank guarantee in obtaining a licence for an affordable housing project being developed in Sector 68 Gurugram. As a consequence of the same, the DTCP, Haryana in May 2022, blacklisted the Builder and also cancelled the licence of the project located in Sector 68, Gurugram. Further, this Hon'ble Authority had also issued orders to freeze the bank accounts associated with the promoter.

- xi. That as on date there is no construction going on the project site. The respondent has only cast the ground floor slab of the tower in which the flat of the complainant is located. It is submitted that there is not even an iota of any development work going on at the project site.
- xii. That in lieu of the aforementioned facts and circumstances, the complainant was left with no other option but to knock the doors of this Authority, seeking following reliefs.

**C. Relief sought by the complainant.**

4. The complainant has sought the following relief(s):

- i. Direct the respondent to refund the amount deposited by the complainant along with interest at prescribed rate from the date of each deposit till the date of realisation.
- ii. Direct the respondent to pay an amount of Rs.10,00,000/- as compensation for mental agony and harassment.
- iii. Direct the respondent to pay any amount of Rs. 1,00,000/- towards litigation expenses.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. On 09.02.2024, the case was adjourned for 01.03.2024 for appearance of the respondent as well as filing reply on behalf of the respondent. Thereafter on 01.03.2024 and 29.03.2024, Shri Rahul Raghav (proxy counsel) appeared on behalf of the respondent and was directed to file reply within stipulated time with cost of Rs.10,000/- failing which defence



of respondent may be struck off. However, despite specific directions, the respondent failed to file the written reply and has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the proceedings of the authority by non-filing of written reply. Thus, the defence of the respondent was struck off for not filing reply vide order dated 07.02.2025.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaints can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

8. 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**

9. 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**

10. 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) *The promoter shall-*

*(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. 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.
12. 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.

**F. Findings on the relief(s) sought by the complainant.**

**F.1 Direct the respondent to refund the amount deposited by the complainant along with interest at prescribed rate from the date of each deposit till the date of realisation.**

13. The complainant had booked a residential apartment in the Affordable Group Housing project of the respondent named "Mahira Homes-103" at Sector-103, Gurugram and was allotted a flat bearing no. 403, 4<sup>th</sup> floor, Tower F having carpet area of 570 sq. ft. vide allotment letter dated

01.07.2019. As per record, out of the sale consideration of Rs.23,53,300/-, the complainant has paid the entire amount i.e., Rs. 23,53,300/- to the respondent till date.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:-

***"Section 18: - Return of amount and compensation***

*18(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.*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

15. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

***1 (iv)***

*"All such projects shall be required to be necessarily completed within 4 years from the date of 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 the policy."*

16. **Due date of handing over of possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of 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 respondent has obtained environment clearance and building plan approval in respect of the said project on 29.01.2020 and 29.03.2019 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 29.07.2024.
17. The authority considering the above facts opines that although the due date of possession (29.07.2024) has not lapsed at the time of filing of the present complaint on 27.10.2023, however, section 18 of the Act is invoked if the promoter is unable to handover possession of the unit due to discontinuance of business as developer on account of suspension or revocation of registration under this Act or any other reason then the allottee shall be entitled to refund of the entire amount paid to the respondent along with prescribed rate of interest.
18. It is further observed that the Authority on 27.05.2022 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 the physical progress of the project was approximately 15-20% and progress of construction works did not seem commensurate to the payments withdrawn from the bank accounts. Moreover, on 17.05.2022

the Director Town & Country Planning blacklisted the said developer from grant of license on account due to various grave violations by the promoter company which was subsequently withdrawn by the department on 21.07.2022 subject to fulfilment of certain conditions. Also, on 19.05.2022, all the accounts were freeze by the Authority due to non-compliance of the provisions of the Act, 2016. On 06.11.2023, the Authority initiated suo-moto revocation proceedings under section 35 of the Act. 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 freeze therefore, this amounts to discontinuation of business of the respondent.

19. 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 and also due to the promoter's serious violations, there seems no possibility of completing the said project in near future. Thus, the Authority is of the view that the complainant is entitled to his right under section 18(1)(b) read with section 19(4) of the Act of 2016 to claim the refund of amount paid along with interest at prescribed rate from the promoter.
20. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund of the paid-up amount as per provisions of the Act and rules framed thereunder. Proviso to section 18 of the Act provides that where an allottee(s) intends to withdraw from the project, the promoter shall be liable 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 and it has been prescribed under rule 15 of the rules. Rule 15 is reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19**

*For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

21. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.02.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. Accordingly, the Authority directs the respondent to refund the paid-up amount of Rs. 23,53,300/- received by it along with interest at the rate 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 an amount of Rs.10,00,000/- as compensation for mental agony and harassment.
  - F.III** Direct the respondent to pay any amount of Rs. 1,00,000/- towards litigation expenses.

24. The above-mentioned reliefs no. F.II and F.III as sought by the complainant are being taken together as the complainant is seeking relief w.r.t compensation and harassment and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 of the Act and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act.

**G. Directions of the authority.**

25. 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 of Rs.23,53,300/- 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.
- ii. Out of the total amount so assessed, the amount paid by the bank/ financial institution be refunded first and the balance amount along with interest if any, be refunded to the complainant-allottees. Further, the respondent/promoter is directed to provide the No Objection Certificate (NOC) to the complainant after getting it from the bank/financial institution.



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.

26. The complaint stands disposed of.

27. Files be consigned to registry.

**Dated: 07.02.2025**



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory  
Authority, Gurugram