

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

Complaint No.: 3444 of 2023
Date of filing: 11.08.2023
Date of decision: 20.02.2025

Rajinder Kumar Sidhanti

R/O: - H.No. 1767, Urabn Estate, Sector-7, Karnal
(Rural), Part 1, Karnal, Haryana-132001

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:

Ms. Daggal Malhotra (Advocate)
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	31.10.2021 (Page 13 of complaint)
8.	Allotment Letter	03.12.2021 (Page 16 of complaint)
8.	Flat Buyer's Agreement	Not executed
9.	Unit no.	104, Tower 4 (Page 28 of complaint)
10.	Possession clause	<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> <i>Section 1(iv)</i> <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>

		<i>from the date of commencement of the project.</i>
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.	Sale consideration	Rs. 25,74,188/- (As on page no. 10 of complaint)
15.	Amount paid by the complainant	Rs.6,63,197.40/- (As per receipts on page no. 21-22 of complaint)
16.	Refund request	23.05.2022 (As on page no. 23 of complaint)
17.	Acceptance of refund request by respondent	23.06.2023 (As on page no. 30 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 a project by the name of Mahira Homes 104 situated in Sector 104 Gurugram was to be developed by the Respondent. The complainant applied for allotment of a flat in the above-mentioned project of the respondent under the Affordable Housing Policy -2013. The said

application was confirmed as received vide application receipt dated 31.10.2021. That, the Complainant also paid a sum of Rs.1,29,299.40/- as Application amount duly conformed as received by respondent. That, on successful draw of lots, complainant was allotted, vide allotment letter dated 03.12.2021, flat no: 104 in Tower 4 measuring 643.66 sq. ft. carpet area 2BHK + Utility- Type -1 in the said project.

- b) In furtherance of the same, the complainant made the requisite payments as sought by the respondent. The basic sales consideration of the said flat was Rs.25,74,188/- and the total amount paid by the complainant to the respondent is Rs. 6,63,197.40/- i.e., Rs.6,62,607.40/- (paid minus GST).
- c) On account of personal reasons of the complainant, the complainant sought surrender/cancellation of the allotment and made a request to the respondent vide email dated 19.05.2022 and further submitted a formal cancellation application dated 23.05.2022, duly received and acknowledged by the respondent.
- d) The respondent vide several emails, one of such emails being email dated 17.02.2023, committed to give the refund of the remaining amount to the complainant vide cheque. But, unfortunately, even after a lapse of more than one year since the date of request of cancellation having been made by complainant and accepted by respondent, the respondent has still till date failed to give refund of the refundable amount as per policy to the complainant.
- e) The complainant, a senior citizen has followed-up multiple times with the respondent and has sent numerous emails, made several visits to the office of the respondent but all in vain. Due to non-responsiveness and inaction on the part of the respondent, the complainant was compelled to even send a legal notice to the respondent which again has reaped no result.

- f) That till date, the respondent has not paid any heed to the several requests made by the complainant asking for withdrawal/ cancellation of allotment and refund of his hard-earned money with due compensation.
- g) In the present case, the surrender/cancellation of allotment request was made by the Complainant within one year from the date of commencement of project and thus only 1% of cost of flat could have been forfeited by the respondent and therefore, the respondent was required to refund the remaining amount. That, 1% of cost of flat is Rs.25,741.88/- and thus the refundable amount is Rs.6,36,865.52/-.
- h) Furthermore, the respondent has failed to make the above-mentioned refund to the complainant since 23.05.2022 and the respondent is thus also liable to pay interest, at prescribed rate of interest, on the said amount from the date of surrender/cancellation i.e., 23.05.2022 till date of realization of amount.
- i) That, for the aforementioned reasons, the complainant is compelled to file the present complaint before this Hon'ble Authority.

C. Relief sought by the complainant.

4. The complainant has sought following relief:

- i. Direct the respondent to refund the total amount paid in lines with the provisions of Affordable Housing Policy, 2013, refundable amount totaling to Rs.6,36,865.52/-.
- ii. Award amount of interest in the favor of complainant, at prescribed rate of interest, on the refundable amount from the date of surrender/cancellation i.e., 23.05.2022 till date of realization of amount as the respondent has failed in making refund even after duly receiving surrender/cancellation application on 23.05.2022.
- iii. Award litigation costs to the tune of Rs. 40,000/- or such amount as the Hon'ble Authority may deem fit, in the favor of the complainant and

against the respondent.

D. Reply by the respondent.

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

- a) That present complaint was filed on 11.08.2023 and registered as complaint no. 3444 of 2023. The authority issued a notice dated 13.06.2022 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 14.12.2023. 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 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

A✓

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 the total amount paid in lines with the provisions of Affordable Housing Policy, 2013, refundable amount totaling to Rs. 6,36,865.52/-.

F.II. Award amount of interest in the favor of complainant, at prescribed rate of interest, on the refundable amount from the date of surrender/cancellation i.e., 23.05.2022 till date of realization of amount as the respondent has failed in making refund even after duly receiving surrender/cancellation application on 23.05.2022.

12. The complainant was allotted a unit no. 104 tower-4, in the project "Mahira Homes-104" by the respondent/builder for a total consideration of Rs. 25,74,188/- 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.6,63,197/- out of the total sale consideration. Further, the complainant has surrendered the unit before the due date of possession vide letter dated 23.05.2022, at page no. 105 of the complaint which is reproduced as under for a ready reference:

A

"Due to some other financial commitments, I/we will not be able to continue the said booking in your project. Therefore I/We request you to cancel my/our application and refund the amount paid by me/us."

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 freezed 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. 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.

F.III Award litigation costs to the tune of Rs.40,000/- or such amount as the Hon'ble Authority may deem fit, in the favor of the complainant and against the respondent.

18. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357*), 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 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

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

A

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: 20.02.2025


(Vijay Kumar Goyal)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM