

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

Date of Order: 05.02.2025

Name of the Builder		Mahira Buildtech Pvt. Ltd.	
Project Name		Mahira Homes-103	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2642/2023	Bharat Gupta V/s Mahira Buildtech Pvt. Ltd.	V.P Singh (Complainant) Rishabh Gupta (Respondent)
2.	CR/2646/2023	Poonam Gupta V/s Mahira Buildtech Pvt. Ltd.	V.P Singh (Complainant) Rishabh Gupta (Respondent)

CORAM:

Ashok Sangwan	Member
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ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Mahira Homes-103" at Sector 103, Gurugram being developed by the respondent/promoter i.e., Mahira Buildtech Private Limited. The



terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund of the entire paid-up amount along with interest.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: "Mahira Homes-103" at Sector 103, Gurugram

Possession clause in Affordable Housing Policy-

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.

1. Date of sanction of building plans- Date of sanction of building plans is 29.03.2019 as per information obtained from the planning branch.

2. Date of grant of environmental clearance- Date of grant of environmental clearance is 29.01.2020 as per information obtained from the planning branch.

3. Due date of handing over of possession- 29.07.2024

[The due date has been calculated as 4 years from date of grant of environmental clearance i.e., 29.01.2020 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020].

4. Occupation certificate- Not obtained

5. DTCP License no. 31 of 2019 dated 01.03.2019- Bijender Singh and Ors. are the licensee for the project as per DTCP website.

6. RERA registration – Revoked vide order dated 11.03.2024.



Sr.	Complaint no./title/ date of filing complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer of possession	Total sale consideration and amount paid by the Complainant	Relief Sought
1.	CR/2642/2023 Bharat Gupta V/s Mahira Buildtech Pvt. Ltd. DOF- 04.07.2023	Not filed	703, Tower-G (As per page no. 21 of the complaint)	Not executed Date of allotment- 01.07.2019 (page 21 of complaint)	29.07.2024 Offer of possession- Not offered	TSC: Rs.23,53,300/- (as per SOA dated 13.07.2019 on page 29 of complaint) AP: Rs. 5,88,326/- (as per complainant's account statement at page 25 of complaint)	Refund
2.	CR/2646/2023 Poonam Gupta V/s M/s Mahira Buildtech Pvt. Ltd. DOF- 04.07.2023	Not filed	304, Tower-G (As per page no. 21 of the complaint)	Not executed Date of allotment- 01.07.2019 (page 21 of complaint)	29.07.2024 Offer of possession- Not offered	TSC: Rs.23,53,300/- (as per SOA dated 13.07.2019 on page 29 of complaint) AP: Rs. 5,88,326/- (as per complainant's account statement at page 24-25 of complaint)	Refund

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOF- Date of filing complaint
TSC- Total Sale Consideration
AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of refund of the entire paid-up amount along with interest.



5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2642/2023 titled as Bharat Gupta V/s Mahira Buildtech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.

A. Unit and project related details

7. 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:

CR/2642/2023 titled as Bharat Gupta V/s Mahira Buildtech Pvt. Ltd.

S.No.	Particulars	Details
1.	Name and location of the project	"Mahira Homes" at sector 103, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
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	Revoked vide order dated 11.03.2024
6.	Unit no.	703, Tower-G (As per page no. 21 of the complaint)
7.	Unit area admeasuring	570 sq. ft. (Carpet area) (page 21 of the complaint)
8.	Date of allotment	01.07.2019 (page 21 of complaint)
9.	Date of building plan approval	29.03.2019 (As per information provided by planning branch)

10.	Environmental clearance dated	29.01.2020 (As per information provided by planning branch)
11.	Execution of BBA	Not executed
12.	Possession clause as per Affordable Housing 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>
13.	Due date of possession	29.07.2024 [Calculated as 4 years from the date of grant of environmental clearance i.e., 29.01.2020 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
14.	Total sale consideration	Rs.23,53,300/- (as per SOA dated 13.07.2019 on page 29 of complaint)
15.	Amount paid by the complainant	Rs. 5,88,326/- (as per complainant's account statement at page 25 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions: -

- I. That the complainant on 13.04.2019 submitted the application for booking a 2BHK Type D flat in the project of the respondent named "Mahira Homes" at Sector-103, Gurugram and paid booking amount



- Rs.1,15,000/-, (i.e. 5% of the BSP) to the respondent. Thereafter, on 01.07.2019, an allotment letter was issued by the respondent vide which a flat bearing no. 703, Tower G, measuring 570 sq. ft. was allotted to him for a basic sale price of Rs.23,30,000/-.
- II. That the complainant further paid Rs.4,73,326/- vide cheque bearing no.578213 dated 13.07.2019 against the allotment of said flat, but the respondent never ever bothered to issue receipt against the said payment made by him.
- III. That the complainant reminded telephonically to the respondent by end on the July 2019, for execution of the builder buyer agreement for availing home loan from the Punjab National Bank or Canara bank, but the respondent stated that we can't get the BBA executed till we get the environment clearance certificate from DTCP and also confirmed that they shall be paying interest for delay in commencing the said project, but the respondent started raising demand notices against the booked flat and has demanded the payment from the complainant much prior to the issuance of the environment certificate.
- IV. That the respondent has demanded 5% booking amount, 20% allotment amount & 12.49% of amount and in total 37.50% of BSP of flat prior to the commencement date/environment clearance certificate and with malafide intention, which was illegal and same is violation of Affordable Housing Policy/HRERA Act.
- V. That the complainant approached the Punjab National Bank for availing home loan in order to finance the said flat, but the bank refused to grant any home loan for said project.
- VI. That the respondent has forcefully, illegally cancelled the flat booking of the complainant and issued notice to the complainant on 13.01.2020 despite the respondent admits the fact that the bank has



refused the loan because of their non-compliance. The respondent email dated 06.03.2020 duly admits that the complainant has applied for the bank loan from PNB Bank however the bank refuse to grant loan, hence the complainant requested for refund of his paid amount of Rs.5,88,326/-.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s).

i. Direct the respondent to refund the entire paid-up amount along with interest.

10. 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.

11. The respondent/promoter put in appearance through Advocate and marked attendance on 31.01.2024 and 21.02.2024. Despite specific directions for filing of reply, it failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide proceedings dated 21.02.2024, the defence of the respondent was struck off.

12. 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 complainant.

E. Jurisdiction of the authority

13. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.



E.I Territorial jurisdiction

14. 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

15. 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.

16. 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.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to refund the entire paid-up amount along with interest.

17. The complainant had booked a residential apartment in the Affordable Group Housing project of the respondent named "Mahira Homes-103" at Sector-103, Gurugram by paying a sum of Rs.1,15,000/- and was allotted a flat bearing no. 703, Tower-G 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 a sum of Rs.5,88,326/- to the respondent till date. The Authority observes that even after receiving more than 25% of the sale consideration from the complainant, no efforts were made by the respondent to execute a buyer's agreement against the unit in question with the complainant. Section 13(1) of the Act, 2016, provides that the respondent/promoter shall not accept more than 10% of the total sale consideration of the unit as an advance payment without first entering into agreement for sale. Despite the payment schedule being aligned with the Affordable Group Housing Policy, 2013, adherence to the provisions of the Act is mandatory. Thus, the respondent's actions are in violation of Section 13(1) of the Act, 2016.

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 fulfillment of certain conditions. Also, on 19.05.2022 all the accounts were freezed 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, 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.

19. 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 than 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:....."

20. 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 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. Accordingly, the Authority directs the respondent to refund the paid-up amount of Rs.5,88,326/- 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.

G. Directions of the authority

21. 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.5,88,326/- 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. 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.
22. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
23. Complaint stands disposed of.
24. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.02.2025