

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

Complaint No.: 3956 of 2023
Date of filing: 28.08.2023
Date of decision: 06.03.2025

Anita Pundir

R/O: - H.No. 16B, Block-C, Gali No.5, New Jaankipuri,
Uttam Nagar, New Delhi-110059

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. Sunil Kumar Bhardwaj (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-95"
2.	Project location	Village Dhorka, Sector-95, Gurugram.
3.	Nature of project	Affordable group housing
4.	Area of project	10.44375 acres
5.	HRERA registered/ not registered	Registration revoked
6.	DTCP License	License no. 24 of 2020
7.	Application Fee Paid	23.02.2022 (Page 21 of complaint)
8.	Flat Buyer's Agreement	Not executed
9.	Unit no.	303, Tower 6 (Page 28 of complaint)
10.	Possession clause	N/A
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	N/A
15.	Amount paid by the complainant	Rs.7,01,044/- (As per SOA on page no. 32 of complaint)

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16.	Refund request	27.09.2022 (As on page no. 26 of complaint)
17.	Acceptance of refund request by respondent	27.09.2022 (As on page no. 24 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) The complainant, Anita Pundir, aged 52 years, w/o Shri Dhan Singh Pundir is residing at H.No.C-16B, Block - C, New Janakpuri, New Delhi.
- b) That on 23.02.2022, the complainant made the payment of Rs.1,35,086/- through online from her Saving Bank Account No.235701500074 maintained with ICICI Bank for the Application Fee of Registration of said Flat.
- c) That on 06.05.2022, the respondent further demanded a sum of Rs.5,000/- in respect of Balcony Area and issued Demand / Tax Invoice of Rs.1,41,488/-, including the paid amount of Rs.1,35,086/-).
- d) That on 20.05.2022, complainant vide Cheque No.121418 dated 20.05.2022 of Rs.5,65,958/- drawn on Punjab National Bank made further payment for the said Flat No.303, Tower No.6, Sector-95, Gurugram, Haryana - 122005 (Carpet Area 643.28 sq. yard) (for short "said Flat") of Czar Buildwell Pvt. Ltd. (for short CBPL"), and accordingly, the respondent issued a payment receipt no.43016 dated 20.05.2022 under customer id no.MH95-35381 for the aforesaid amount.
- e) That thus, the Complainant paid 25% payment of the Flat Amount and the Respondent ensured that the possession of the said Flat would be

handed over to the Complainant after completing the successful payment of 36 installments of the said Flat.

- f) That in September, 2022, the Complainant, due to personal reasons, did not want to continue with the said Flat and, therefore, the Complainant desired to cancel the said Flat and wanted to refund the amount from the Respondent.
- g) That on 27.09.2022, the Complainant submitted her necessary Original Documents completed in all respects with the Respondent for the cancellation of the said Flat and the Respondent acknowledged a Check List 27.09.2022 for the receipt of Documents submitted by the Complainant for the cancellation of the Flat.
- h) That at the time of the said cancellation of the Flat, the Respondent ensured to the Complainant that the refund would be made within 120 days.
- i) That after September, 2022, the Complainant made vigorous follow up to the Respondent for the refund of amount paid. But the Respondent did not refund the said amount and made lame excuse by one pretext or another.
- j) That on 02.05.2023, the Complainant sent an email dated 02.05.2023 to the Respondent and requested for the refund of the said payment. The Respondent in its Reply dated 02.05.2023 in response to the aforesaid email of the Complainant, ensured that the said refund would be made very soon.
- k) That till date, after vigorous follow up of the Complainant, the Respondent neither refunded any amount nor paid any interest, penalty etc. to the Complainant due to which the Complainant had to face financial crises and could not balance his normal life.

- 1) That from the conduct and behavior of the Respondent, it is established that Respondent was having malafide intentions from the very beginning and the Respondent has defrauded and cheated the Complainant by exploiting. Respondent intentionally and deliberately did not refund the legitimate dues of the Complainant and has thereby violated the provisions of the Act and committed an offence under the said Act read with Section 420 of the IPC.

C. Relief sought by the complainant.

4. The complainant has sought following relief:

- i. Direct the respondent to refund pay a sum of Rs. 7,01,044/- being the amount of refund.
- ii. Direct the respondent to pay interest amount of Rs.1,89,270/- @ 18% per annum for the period from 23.02.2022 to 22.08.2023 (for 18 months).
- iii. Direct the respondent to pay further interest @ 18% per annum on Rs.7,01,044/- till the actual realization of the said payment.
- iv. Direct the respondent to pay legal cost in favor of the complainant and against the respondent.

D. Reply by the respondent.

- a) That present complaint was filed on 28.08.2023 and registered as complaint no. 3956 of 2023. The authority issued a notice dated 31.08.2023 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 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.
- a) Copies of all the relevant documents have been filed and placed on the record.

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Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these documents and submission available on record.

E. Jurisdiction of the authority

5. 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

6. 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 pay a sum of Rs. 7,01,044/- being the amount of refund.

F.II. Direct the respondent to pay interest amount of Rs.1,89,270/- @ 18% per annum for the period from 23.02.2022 to 22.08.2023 (for 18 months).

12. The complainant was allotted a unit no. 303 tower-6, in the project "Mahira Homes-95" by the respondent/builder for a total consideration of Rs. 28,00,000/- 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.7,01,044/- out of the total sale consideration. Further, the complainant has surrendered the unit before the due date of possession vide letter dated 27.09.2022, at page no. 26 of the complaint which is reproduced as under for a ready reference:

"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

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environment clearance i.e., 27.04.2022, hence the respondent is entitled to deduct the 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 Direct the respondent to pay legal cost in 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 of Rs. 7,01,044/- by the complainant 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 (27.09.2022) till the date of actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).
- 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.
- III. 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.

20. Complaint stands disposed of.

21. File be consigned to registry.

Dated: 06.03.2025


(Vijay Kumar Goyal)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram