

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

Complaint no.: 1994 of 2024
Date of decision: 07.05.2025

1. Samar Madan
2. Sakshi Madan
R/o: E-214, Sector-18, Rohini,
New Delhi.

Complainants

Versus

M/s Czar Buildwell Pvt. Ltd
Regd. Office at: 302-A, Global Foyer,
Sector-43, Golf Course Road, Gurugram-122009

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sh. Saurabh Aggarwal
None

**Complainant
Respondent**

HARERA
GURUGRAM
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 thereunder 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 complainants, 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", Sector-104, Gurugram, Haryana.
2.	Nature of the project	Affordable Housing Scheme Project, Multistoried Towers.
3.	RERA Registered/ not registered	Registration revoked
4.	DTCP License	66 of 2021 dated 07.09.2021 valid up to 06.09.2026
6.	Allotment letter	03.12.2021 (As on page no. 25 of complaint)
7.	Unit no.	T8-1603, Floor-16, Tower-T8, Type-1BHK-Type-4 (As on page no 25 of complaint)
8.	Unit area	337.66 sq.ft. [Carpet-Area] (As on page no. 25 of complaint)
9	Environment clearance	27.04.2022

		(As per website of SEIAA, Haryana)
10.	Builder-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 2013 which provides as under :</i></p> <p>Section 1 (iv)</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. This 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 from the date of commencement of project.</i></p>
12.	Due date of delivery of possession	27.04.2026 [Calculated 4 years from the date of E.C]
13.	Total sale consideration	Rs.13,95,070/- (As on page no. 26 of complaint)
14.	Amount paid by the complainant	Rs.6,38,816/- [As per S.O.A dated 28.04.2023 on page no. 41 of complaint]
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of Possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent launched an Affordable Group Housing Colony under the name "Mahira Homes 104" Village-Dhanwapur, Sector-104, Gurugram on the area measuring 10.44375 acres under the license no. 66 of 2021 dated 07.09.2021. It is relevant to mention herein that the said license was granted to the respondent by the DGTCP Haryana under the Affordable Housing Policy, 2013 issued by the Government of Haryana under the provisions of Section-9A of the Haryana Development & Regulation of Urbans Area Act, 1975.
- II. That the complainant applied for a residential unit under the affordable housing scheme in the above mentioned project launched by the respondent on 29.10.2021.
- III. That the complainants were allotted residential flat in the project vide allotment letter dated 03.12.2021 against their application no. MH104-071.
- IV. Further, providing the details of the project, confirming the allotment of unit no. T8-1603, admeasuring 333.66 sq.ft. in the aforesaid project, confirming the allotment of the unit for a total sale consideration of Rs.13,95,070/- including the basic price, car parking charges and development charges.
- V. That the complainants have paid Rs.69,753/- at the time of booking and then Rs.69,063/- within the 15 days of the issuance of the allotment as per the payment plan. The respondent had to deliver possession of the unit within a period of 36 months from the date

of allotment. Though the payment to be made by the complainant was based on the payment plan but unfortunately the demands were not corresponding to the factual situation on ground.

- VI. That the complainants were shocked to know about the proceedings initiated against the respondents by the Authority for submitting forged and fabricated bank guarantees.
- VII. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent but the respondent was never definite about the delivery of the possession. The complainants were in utter shock and dismay when they came to know about the cancellation of their unit by the respondent for non-payment. The complainants had never received any reminder/reply related to their due payments.
- VIII. The complainants after thousand of efforts and requests were finally given an option in which they were then asked to take another unit in lieu of the above mentioned unit as the respondent had already allotted the above mentioned unit to a third party.
- IX. The complainants left with no other option and in order to safe guard their interest and money already paid agreed to this offer of the respondent and signed an affidavit stating that the complainants wants to transfer their unit from T8-1603 to T8-1810 and the amount paid would be adjusted in the new unit. Thereafter, the complainants were again issued a new allotment letter for the new allotted unit and were asked to fulfil the new raised demands. As per the demands raised by the respondent, based on payment plan, the complainants had already paid Rs.6,97,533/- towards the

said unit against the total sale consideration of Rs.13,95,070/- which is almost 50% of the amount. The respondents have violated Section 13 of the Act, 2016 by demanding more than 10% of the amount without the execution of the BBA.

- X. That the complainant sent various communications to the respondent raising various issues in relation to the said unit and asking the reasons for delay in execution of BBA and the possession of the unit but the respondents till date has failed to provide any satisfactory response to the same.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the amount paid with interest in respect of the allotted unit with interest at the prescribed rate.
5. The present complaint was filed on 15.05.2024 and registered as complaint no. 1994 of 2024. As per the registry, complainant has sent copy of the complaint along with annexures through speed post as well as through email. The matter was adjourned on 04.09.2024, 27.11.2024, 26.02.2025 and vide proceedings dated 07.05.2025, no one appeared on behalf of the respondent and hence, the respondent is proceeded ex-parte.
6. 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 based on these undisputed documents and submission made by the complainant.

D. Jurisdiction of the Authority:

7. 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

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. 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.

11. 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 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** 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."

12. 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. and M/s Sana***



Realtors Private Limited & others V/s Union of India & others (supra), the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

E. Findings on relief sought by the complainant:

F.I Direct the respondent to refund the amount paid with interest in respect of the allotted unit with interest at prescribed rate.

13. The complainants applied for the allotment in the affordable housing project i.e., "Mahira Homes-104" located in Sector-104, Gurugram being developed by the respondent i.e., M/s Czar Buildwell Pvt. Ltd. The respondent issued an allotment letter dated 03.12.2021 in favor of the complainants and thereby intimated to the complainants about the allotment of unit no. T8-1603 in Tower-T8 for a total sale consideration of Rs.13,95,070/-. The unit was cancelled by the respondent on account of non-payment, without sending any reminder related to the due payments. Thereafter, the complainants were given an option to take another unit in lieu of the above mentioned unit as the above mentioned unit was allotted to a third party. The complainants signed an affidavit stating that the complainants want to transfer their unit from T8-1603 to T8-1810 and the amount paid by them be adjusted in the new unit. The respondent failed to execute Builder Buyer Agreement despite several requests of the complainants. the complainants wants to withdraw from the project.
14. 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 based upon the 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 M/s. 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 freeze^{o3cu ✓}d by the Authority due to non-compliance of the provisions of the Act, 2016. 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 are freeze^{o3cu ✓}d therefore, this amounts to discontinuation of business of the respondent.

15. 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 then 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:....."

16. 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 19(4) 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.6,38,816/- 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.

F. Directions of the authority:

17. Hence, the Authority hereby passes this order and issue 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):
- The respondent /promoter is directed to refund the amount i.e., **Rs.6,38,816 /-** 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 realisation of the amount.
 - 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.
18. Complaint stands disposed of.
19. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.05.2025

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