

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

Complaint no. : 1753 of 2024
Date of complaint : 08.05.2024
Date of order : 16.07.2025

Rohit Shokeen and Manisha Shokeen
Both R/o: - 306, Virat Apartment Inder Enclave,
Paschim Vihar, Delhi-110087.

Complainants

Versus

Mahira Buildtech Private Limited
Having Regd. Office at: - 311-A, Global Foyer
Mall, Golf Course Road, Sector-43, Gurugram.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Saurabh Yadav (Advocate)
None

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottees 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 provisions 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 complainant, date of proposed handing over the possession, 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, 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.	1306, Tower-C (As per page no. 16 of the complaint)
7.	Unit area admeasuring	586 sq. ft. (Carpet area) (page 16 of the complaint)
8.	Date of allotment	01.07.2019 (page 16 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	15.01.2020 (page 22 of complaint)
12.	Possession clause as per Affordable Housing Policy ,2013	1(IV) of the Affordable Housing Policy, 2013 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

		<i>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.24,17,940/- (as per SOA dated 13.03.2023 on page 68 of complaint)
15.	Amount paid by the complainant	Rs.24,17,940/- (as per SOA dated 13.03.2023 on page 68 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants gave their application for booking of a 2BHK flat which was subject to a draw. Later, the complainants were intimated by the respondent that they are one of the successful allottees in the draw conducted on 01.07.2019.
- II. That the complainants were allotted a residential unit bearing no. 1306, Tower-C, 13th Floor having carpet area of 586 sq.ft. in the project of respondent namely "Mahira Homes -103" at Sector 103, Gurugram vide allotment letter dated 01.07.2019 for a total sale consideration of Rs.24,17,938/-.
- III. That till 15.07.2019, the respondent had already demanded and received 25% of the consideration amount i.e. Rs.5,98,588/- of the above said flat from the complainant, but it did not bother to execute the builder buyer's agreement with the complainant. The complainant

visited the office of the respondent multiple times and on his consistent follow ups and requests, a flat buyer's agreement was signed and registered between the parties on 15.01.2020.

- IV. That the respondent clandestinely didn't mention the exact possession date in the agreement, but at the time of booking and also at the time of signing the agreement the respondent had assured the complainant that they have all the necessary approvals of the project and will deliver the possession by July 2023.
- V. That as per the payment plan schedule, the respondent raised various demand letters to the complainants demanding the installments of the flat and the complainants acted accordingly and paid each and every installment on time via online transfer.
- VI. That the complainants had paid the full and final sale consideration of the flat i.e. Rs.24,17,940/- to the respondent and in the month of July 2023, when the complainant tried to contact the officials of respondent regarding the possession of the flat, then the complainant did not get any satisfactory reply.
- VII. That in the month of January 2024 the complainants personally visited the office of the respondent wherein they found that the respondent is not maintaining their office, and on their inquiry, they got to know that the respondents' office has been closed from last many months. The complainants also visited the construction site where they discovered that not even 25% of the project is completed.
- VIII. That the complainants have also come to know that the RERA registration of the project has been revoked by the Authority due to some misconduct/default on part of the respondent.
- IX. That the complainant has also come to know that the builder does not possess all the valid permits for constructing this building and after

the revoking of the license, now it is impossible for the builder to complete the project in question.

- X. That the respondent/builder have collected the consideration amount of the said flat and since then the respondents are using the complainant's hard-earned money for their personal interest and delayed the construction of the above said project and failed to deliver the timely possession of the above said flat which clearly demonstrates the deficiency in services on the part of the respondent/promoter.
- XI. That as per clause 24 of the flat buyer agreement, the respondent is liable to refund the entire amount paid along with an interest @ SBI highest marginal cost of lending rate plus 2 %. Hence the respondents are liable to pay interest to the complainant on his entire deposit amount, calculated from the date on which such payments were made by the complainant.
- XII. That the respondent has failed to address the concerns of the complainants even after several requests; thus, the complainants have lost faith and filed the present complaint before this Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- Direct the respondent to refund the entire paid-up amount along with interest.
 - Direct the respondent to pay compensation and litigation charges.
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.

6. Despite due service of notice, no reply has been received from respondent with regard to the present complaint and also none has put in appearance on its behalf before the Authority. In view of the above, the respondent was proceeded ex-parte vide proceedings dated 16.07.2025.
7. 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.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

9. 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.

D.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.

F. Findings on the relief sought by the complainants.

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

12. The complainants 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 were allotted a flat bearing no. 1306, Tower-C, 13th Floor having carpet area of 586 sq.ft. vide allotment letter dated 01.07.2019. The BBA was executed between the parties regarding the said allotment on 15.01.2020 and the complainants have paid the entire sale consideration against the unit in question i.e. Rs.24,17,940/- to the respondent. The Authority observes that 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 the building plan approval and environmental clearance in respect of the said project on 29.03.2019 and 29.01.2020 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.

13. 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.
14. The Authority considering the above mentioned facts opines that 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 complainants 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:....."*

15. 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 complainants are entitled to their 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.24,17,940/- 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.II Direct the respondent to compensation and litigation charges.

16. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. 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.,** 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. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules.

G. Directions of the authority

17. 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.24,17,940/- 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.
18. Complaint stands disposed of.
19. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.07.2025