

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

Complaint no.	2109 of 2024
Date of filing complaint	28.05.2024
First date of hearing	11.09.2024
Order pronounced on	16.07.2025

**Sushil Kumar Chouhan**

**Resident of:** Nagehar Uparli (1015),  
Kangra, Himachal Pradesh- 176128

**Complainant**

Versus

**M/s Sai Aaina Farms Private Limited**  
**Regd. office:** 302A, Global Foyer, Golf  
Course Road, Sector 43, Gurugram-  
122009

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Sushil Kumar Chouhan

Complainant

None

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 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:

Sr. No.	Particulars	Details
1.	Name and location of the project	"Mahira Homes" at Sector 68, Gurugram, Haryana
2.	Nature of the project	Affordable group housing colony
3.	Project area	9.96875 acres
4.	DTCP license no.	106 of 2017 dated 22.12.2017
5.	Name of licensee	Mohan investment and properties Pvt. Ltd. and others.
6.	Date of cancellation of license no. 106 of 2017	09.05.2022 (Taken from another case of the same project i.e., CR/3322/2023 decided on 11.03.2025)
7.	RERA Registered/ not registered	Registration revoked by the Authority vide order dated 11.03.2024
8.	Allotment letter dated	03.05.2018 (page 8 of complaint)
9.	Unit no.	H-207, Tower H, Second Floor (page 13 of complaint)
10.	Unit area admeasuring	535.65 sq. ft. (carpet area) 99.94 sq. ft. (balcony area) (page 13 of complaint)
11.	Date of building plan approval	23.02.2018 (As per information provided by Planning Branch of the Authority)
12.	Environmental clearance dated	05.06.2018 (As per information provided by Planning Branch of the Authority)
13.	Execution of BBA	11.09.2018 (page 9 of complaint)
14.	Possession clause as per BBA	<b>8. Possession</b> "8.1 Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in

		<p>default under any part hereof and Apartment Buyer's Agreement including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer possession of the Said Apartment to the Allottee <b>within a period of 4 year from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Dote"), whichever is later."</b></p> <p>(Emphasis supplied)</p> <p>(page 25 of complaint)</p>
15.	Possession clause as per Affordable Housing Policy, 2013	<p><b>1(IV) of the Affordable Housing Policy, 2013</b></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 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></p>
16.	Due date of possession	<p>05.12.2022</p> <p>(calculated from the date of approval of building plans)(an extension of 6 months provided in view of HARERA notification no. 9/3-2020)</p>
17.	Basic sale consideration	<p>Rs.21,96,572/-</p> <p>(As per payment plan at page 53 of complaint)</p>
18.	Amount paid by the complainant	<p>Rs.9,78,862/-</p> <p>(Rs.1,12,000 paid by complainant himself + Rs.8,66,862 loan taken by Indiabulls Housing Finance Limited)</p> <p>(as per documents at page 57-59 of complaint)</p>
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered
21.	E-mail sent by complainant to respondent asking for refund of amount paid by him	<p>23.05.2024</p> <p>(page 61 of complaint)</p>

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- a) That in the year 2018, the complainant had booked a 2BHK (Type-B) unit, bearing unit no. H-207 in tower-H, under an affordable group housing project being developed by "M/s Sai Aaina Farms Private Limited", having its registered office at 302A, Global Foyer, Golf Course Road, Sector-43, Gurugram.
- b) That the said project was duly registered under the provisions of the Real Estate (Regulation and Development) Act, 2016, with the Haryana Real Estate Regulatory Authority (HRERA), Gurugram, under registration no. 21 of 2018 vide memo no. HRERA-2018/1403/299 dated 02.02.2018.
- c) That the complainant, bearing customer ID 660, made an initial payment of ₹1,12,000/- from personal funds and arranged the balance payment through a home loan sanctioned by "Indiabulls Housing Finance Ltd.", under loan account number LAN-HHLGRG00475828.
- d) That while the first and second disbursements were made by the financier in accordance with the construction-linked payment plan, subsequent payments were withheld due to a halt in construction activity by the developer, leading Indiabulls to decline further disbursements.
- e) That the respondent halted further construction of the project, as a result of which Indiabulls Housing Finance Ltd., the complainant's housing loan provider, declined to disburse any further payments in accordance with the terms of the loan agreement. Following this, the respondent threatened the complainant with cancellation of the allotted unit in case of failure to make the remaining payments.

- f) That the complainant visited the respondent's office on 25.04.2022 and met Ms. Manvi Jetly, Senior Manager – CRM, who advised him to submit a written application for refund of the amount already paid, assuring that the refund would be processed within 90 days. The complainant complied by submitting the required application and supporting documents; however, despite regular follow-ups, the respondent failed to respond or refund the amount. Feeling mentally, physically, and financially harassed, the complainant now seeks refund of the amount paid along with applicable interest.

**C. Relief sought by the complainants:**

4. The complainant has sought following relief(s):

I. Direct the respondent to refund the total amount paid by the complainants along with interest at the prescribed under RERA Act, 2016 and Haryana RERA Rules, 2017 to be calculated from date of each payment till the date of realization of the amount.

5. The present complaint was filed on 28.05.2024 and registered as complaint no. 2109/2024. Notice sent to the respondent through e-mail ([MD@mahiragroup.com](mailto:MD@mahiragroup.com)) was duly served on 29.05.2024. Notice sent to the respondent through post (EH092208199IN) was duly served on 03.06.2024. As per the registry, the complainant sent a copy of the complaint along with annexures via speed post as well as email. The tracking report for the same was submitted by the complainants along with the complaint. On 11.09.2024, the respondent was directed to file a reply within the stipulated time period subject to cost of Rs.5,000/-. On 16.10.2024 and 20.11.2024, the respondent was given another opportunity to file a reply subject to additional cost of Rs. 5,000/-. However, despite specific directions, the respondent failed to file a written reply and did not



comply with the order of the Authority. This indicates that the respondent is intentionally delaying the proceedings of the Authority by failing to file a written reply. Therefore, the defence of the respondent is struck off for non-filing of the reply vide order dated 16.07.2025, and the matter is being decided based on the facts and documents submitted with the complaint, which remain undisputed.

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 on the basis of these undisputed documents and submission made by the complainants.

**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.

**D.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.

**D.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) 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.

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."** (Supra) and reiterated in case of **"M/s Sana Realtors Private Limited & other Vs 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 case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**E. Findings on the relief sought by the complainant.**

**E.I Direct the respondent to refund the total amount paid by the complainant along with interest at the prescribed under RERA Act, 2016 and Haryana RERA Rules, 2017 to be calculated from date of each payment till the date of realization of the amount.**

13. The factual matrix of case reveals that the complainant had booked a residential unit in the Affordable Group Housing project of the respondent named "Mahira Homes-68" at Sector-68, Gurugram and was allotted a unit bearing no. 207, 2nd floor, tower H, having carpet area of 535.65 sq. ft. vide allotment letter dated 03.05.2018. A buyer's agreement dated 11.09.2018 was executed between the parties. The complainant has paid an amount of Rs.9,78,862/- against the total sale consideration of Rs.21,96,572/-.
14. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

**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."*

- 15. Due date of handing over of possession:** 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 building plan approval and environment clearance in respect of the said project on 23.02.2018 and 05.06.2018 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 05.12.2022.

16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per Section 18(1) of the Act and the same is reproduced below for ready reference:-

***"Section 18: - Return of amount and compensation***

***18(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.***

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

17. The authority considering the above facts opines that the due date of possession (05.12.2022) has lapsed much before the time of filing of the present complaint on 28.05.2024. Further, Section 18 of the Act is invoked if

the promoter is unable to handover possession of the unit due to discontinuance of business as developer on account of suspension or revocation of registration under this Act or any other reason then the allottee shall be entitled to refund of the entire amount paid to the respondent along with prescribed rate of interest.

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 fulfilment 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. 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 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 and also due to the promoter's serious violations, there seems no possibility of completing the said project in near future. 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.

20. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund of the paid-up amount as per provisions of the Act and rules framed thereunder. Proviso to Section 18 of the Act provides that where an allottee intends to withdraw from the project, the promoter shall be liable 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 and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 is reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19***

*For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

21. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

23. Accordingly, the respondent is obligated to refund the paid-up amount received by it along with interest at the rate 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.

24. Out of total amount so assessed, the amount paid by the bank shall be refunded first in the bank and the balance amount along with interest will be refunded to the complainant.

**F. Directions of the Authority:**

25. 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 amount paid by the complainant 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. Out of the total amount so assessed, the amount paid by the bank i.e., respondent no.2 be refunded first in the bank and the balance amount along with interest will be refunded to the 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.
- IV. The respondent is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.

26. Complaint stands disposed of.

27. File be consigned to the registry.

**Dated: 16.07.2025**

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory  
Authority, Gurugram



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GURUGRAM