

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

Complaint no.	1678 of 2024
Date of filing complaint	01.05.2024
First date of hearing	14.08.2024
Order pronounced on	23.07.2025

Mrs. Shraddha and Mr. Kuldeep Yadav

Resident of: House no. C/160,
Chandrapuri, Mathura, Uttar Pradesh

Complainants

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. Prashant Vashist (Advocate)

None

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 complainants, 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 26 of complaint)
9.	Unit no.	F-804, tower F, Eighth floor (page 32 of complaint)
10.	Unit area admeasuring	543.72 sq. ft. (carpet area) 100 sq. ft. (balcony area) (page 32 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	05.06.2018 (page 28 of complaint)
14.	Possession clause as per BBA	8. Possession "8.1 Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its

		<p>obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in 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 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."</p> <p>(Emphasis supplied) (page 38-39 of complaint)</p>
15.	Possession clause as per Affordable Housing Policy, 2013	<p>1(IV) of the Affordable Housing Policy, 2013</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 environmental clearance being later)(an extension of 6 months provided in view of HARERA notification no. 9/3-2020)</p>
17.	Basic sale consideration	<p>Rs.22,24,887/-</p> <p>(As per payment plan at page 53 of complaint)</p>
18.	Amount paid by the	<p>Rs.24,03,523/-</p>

	complainant	(as per SOA dated 02.09.2021 at page 65 of complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a) That the representatives of respondent company approached the complainants and showed a promising image of a project "Mahira Homes" by M/S Sai Aaina Farms Pvt. Ltd and assured that respondent that they are having all the requisite sanctions from the appropriate authority for the construction and development of the said project. It was further assured to the complainants that and the construction of the projects is being carried in full swing and same will be completed on within 4 (four) years from the date of approval of building plan or grant of environment clearance, whichever is later.
- b) That buyer's agreement for the unit executed between the complainants and the respondent also stipulated the said condition, as the relevant clause pertaining to the possession states that the possession of the unit will be handed over to the allottee within 4 years of getting the approval of building plans or grant of environment clearance, whichever is later. It is pertinent to mention herein that the approval of building plans was granted to the respondent by the office of DGTCP on 23.02.2018 vide memo No. ZP-1202/AD(RA)/2018/6797, as per which the date of handing over the possession of unit in question was 23.02.2022.
- c) That being lured by the false commitments of the respondent, the complainants paid an advance amount of Rs.1,12,000/- to the respondent to get the booking confirmed for the unit bearing no. 804, 2BHK Unit Type-A in tower-F having carpet area of 543.72 sq. ft. along

with 100 sq. ft. balcony area in the project of the respondent for the total sale consideration of Rs.24,03,523/-. A receipt against the said amount for booking dated 19.02.2018 and booking application form was filled and issued by the respondent for confirmation of booking of the complainant in the project "Mahira Homes".

- d) That an acknowledgement receipt of amount Rs.1,12,000/- was issued by the respondent to the complainant towards the payment made by the complainant against the demand raised by the respondent. After the period of more than 3 months, the respondent issued an allotment letter to the complainants.
- e) It is germane to mention that the agreement contained one sided terms and conditions favouring respondent only. Since the complainants by the time of execution of agreement had already paid a total amount of Rs.1,12,000/- and therefore, they were trapped into the lies laid by the respondent, left with no option the complainants had to sign on the dotted line of the agreement. The agreement had a detailed clause in case of failure to deliver possession by the developer under clause 8. That as per clause 8 of the agreement, the respondent had agreed to deliver the possession of the flat/unit within 4 years of sanction of building plans or getting the environment clearance, whichever is later, and the respondent had got the sanction of the building plans on 23.02.2018 and thus the respondent had to deliver the possession of the shop by 23.02.2022.
- f) That it would also be relevant to mention here that the complainants availed a home loan for the purpose of payment of the consideration of the said unit from ICICI Bank which was sanctioned by the bank on 08.08.2018 and was disbursed on 20.08.2018.

- g) That the complainants have already paid the total sale consideration of Rs.24,03,523/- since the booking till date to the respondent. That complainants had not defaulted in any payment and it was made as and when the demand was raised by the respondent.
- h) That the complainants visited the project site of the respondent and was shocked to look at the state of affairs. No work was being carried out by the respondent. Only the partial structure was erected by the respondent. That the complainants used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainants gave on time and the complainants, when visited to the site were shocked and surprised to see that construction work is not going on and no one was present at the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the unit without completing the work and not handing over the possession on time. It is pertinent to mention here that by this time the due date of offer of possession along with extended period/grace period has already been expired and the respondent had not completed the construction work.
- i) That the complainants tried to approach the respondent to get the construction of the shop completed as soon as possible to avoid any further loss of finances but it was of no use. The illegal, unethical and fraudulent actions of the respondent had led to great physical exhaustion, mental torture and financial losses to the complainants.
- j) That despite receiving the total sale consideration of the unit on time, and after numerous requests and reminders over phone calls and

personal visits by the complainants, the respondent has not delivered the possession of the allotted unit to the complainants within stipulated period.

- k) That it is very much apparent that the construction of the unit has not been completed within the stipulated time and the respondent has not fulfilled its contractual obligation and further, have not handed over the possession of the unit to the complainants till this date for the reasons best known to the respondent; which clearly depicts the ulterior motive of respondent to fraudulently extract money from the innocent people.
- l) That as per clause 8(7) of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay the complainants an interest at the rate prescribed in the rules for every month of delay until the day of possession. It is however, pertinent to mention here that the respondent has exploited the complainants by not providing the possession of the unit even after a delay from the agreed possession plan and neither have given the compensation as per the terms of the agreement.
- m) That the possession of the unit has not been handed over to the complainants till date. Further, it is pertinent to mention here that the respondent has delayed the construction of the said project and caused un-due hardships to the complainants. At present the respondent is least worried about completing the construction work and handing over the possession to the unit buyers. As such, the construction work that is being carried out at the construction site is bare minimal and at a very slow rate. There is no chance of completion of construction in near future.

- n) The respondent has failed to obtain Occupation Certificate from the concerned department till date. It is pertinent to mention herein that the RERA registration 21 of 2018 of the said project has also expired and respondent is in no position to complete the project in question.
- o) That having left with no other option the complainant wants to withdraw from the project as the respondent has not acted in accordance with the term of the buyer's agreement and has not handed over the possession of the unit within the stipulated duration hence as per obligations duly engraved in section 12, 11 (4), 19(4), the promoters are liable to refund the paid amount along with interest at the prescribed rate i.e. 12% per annum.
- p) That the cause of action for filing of the present complaint arose when the respondent got signed an illegal and arbitrary agreement from the complainants. The cause of action subsequently arose on multiple occasions when the complainants made requests to the respondent to complete the construction on time. The cause of action arose when the respondent failed to deliver possession of the unit. The cause of action is continuous one and still subsisting, hence the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondent to refund the entire amount paid by the complainants along with prescribed interest from the date of respective deposit till its actual realization.
 - II. Direct the respondent to pay interest at the rate of 14% on the Rs.24,03,523 /- paid as booking/upfront amount.
 - III. Direct the respondent to pay a compensation of Rs. 1 lakh towards legal expenses incurred by the complainants.

- IV. Direct the respondent to pay an amount of Rs. 2 lacs to the complainants towards mental and physical harassment.
5. The present complaint was filed on 01.05.2024 and registered as complaint no. 1678/2024. Notice sent to the respondent through e-mail (crm@mahiragroup.com) was duly served on 02.05.2024. Notice sent to the respondent through post (EH076098384IN) was also duly served. As per the registry, the complainants 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. The respondent failed to file a written reply and is intentionally delaying the proceedings of the Authority by failing to appear and file a written reply. Therefore, the defence of the respondent is struck off for non-filing of the reply vide order dated 23.07.2025, 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 complainants.

E.I Direct the respondent to refund the entire amount paid by the complainants along with prescribed interest from the date of respective deposit till its actual realization.

E.II Direct the respondent to pay interest at the rate of 14% on the Rs.24,03,523 /- paid as booking/upfront amount.

13. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. The factual matrix of case reveals that the complainants 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. 804, 8th floor, tower F, having carpet area of 543.72 sq. ft. vide allotment letter dated 03.05.2018. A buyer's agreement dated 25.06.2018

was executed between the parties. The complainants have paid an amount of Rs. 24,03,523/- against the total sale consideration of Rs.22,24,887/-.

15. 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."

16. **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.

17. In the present complaint, the complainants intends to withdraw from the project and are 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."

18. 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 02.04.2024. 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.

19. 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.

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 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 complainants are 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.

21. **Admissibility of refund at prescribed rate of interest:** The complainants are 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(s) 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."

22. 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.
23. 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., 23.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. Accordingly, the respondent is obligated to refund the paid-up amount of Rs. 24,03,523/- 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.
25. 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.

E.III Direct the respondent to pay a compensation of Rs. 1 lakh towards legal expenses incurred by the complainants.

E.IV Direct the respondent to pay an amount of Rs. 2 lacs to the complainants towards mental and physical harassment.

26. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

27. The complainants are also seeking relief w.r.t. compensation. The 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. 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the Authority:

28. 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 complainants i.e., Rs. 24,03,523/- 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 be refunded first in the bank and the balance amount along with interest will be refunded to the complainants.
- 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

complainants. 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-allottees.

29. Complaint stands disposed of.

30. File be consigned to the registry.

Dated: 23.07.2025



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram

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GURUGRAM