

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

Order disposed of: 11.03.2025

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|----------------------------|-----------------|---|---|
| NAME OF THE BUILDER | | M/s Sai Aaina Farms Private Limited | |
| PROJECT NAME | | "Mahira Homes, at Sector 103, Gurgram, Haryana | |
| S. No. | Case No. | Case title | Appearance |
| 1. | CR/3322/2023 | Balvesh Nath Khanna V/S Sai Aaina Farms Pvt. Lt. & Anr. | Sh. Ranjit Singh Chauhan (Complainant) None (Respondent) |
| 2. | CR/3328/2023 | Lehak M. Khanna V/S Sai Aaina Farms Pvt. Lt. & Anr. | Sh. Ranjit Singh Chauhan (Complainant) None (Respondent) |

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| CORAM: | | |
| Shri Arun Kumar | | Chairman |
| Shri Vijay Kumar Goyal | | Member |
| Shri Ashok Sangwan | | Member |

ORDER

1. This order shall dispose of both the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Mahira Homes" at Sector 103, Gurgram, Haryana being developed by the respondent/promoter i.e., M/s Sai Aaina Farms Pvt. Ltd. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of refund of the entire paid up amount along with interest and other reliefs.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| | |
|---|---|
| Project Name and Location | "Mahira Homes" at Sector 103, Gurgram, Haryana. |
| Project area | 9.96875 acres |
| Nature of the project | Deen Dayal Jan Awaas Yojna |
| Date of cancellation of license no. 106 of 2017 09.05.2022 | |
| RERA Registered/ not registered | Not registered |
| Possession clause as per buyer's agreement | 8.1 Within a period of 4 years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date"), whichever is later. |
| Date of building place approval | 23.02.2018 |
| Date of environment clearance | Not on record |
| Due date of possession | 23.08.2022 (calculated from the date of approval of building plane as the date of environment clearance is not known.) |

| S. No. | Complaint no., Case title, Date of filing of complaint and reply status | Unit no. and size | BBA Due date of possession | Total sale consideration and |
|--------|---|-------------------|----------------------------|------------------------------|
|--------|---|-------------------|----------------------------|------------------------------|



| | | | | Total amount paid by the complainant in Rs. |
|--|---|---|------------|--|
| 1. | CR/3322/2023 title Balvesh Nath Khanna Vs. M/s Sai Aaina Farms Private Limited & Anr. DOF: 28.07.2023 | K-103, tower K, First floor (page 28 of complaint). | 29.06.2018 | BSP: Rs. 21,98,555/- /- AP: Rs. 23,73,893/- |
| 2. | CR/3328/2023 title Lehak M Khanna Vs. M/s Sai Aaina Farms Private Limited. DOF: 28.07.2023 | K-401, tower K, fourth floor. | 29.06.2018 | BSP: Rs. 22,16,387 /- AP: Rs. 23,93,623/- |
| Relief sought by the complainant(s):- Refund along with interest. Litigation charges. | | | | |

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/3322/2023** titled as **titled as Balvesh Nath Khanna Vs Sai Aaina Farms Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and 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, Gurgram, 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 licesnsee | Mohan investment and properties Pvt. Ltd. and others. |
| 6. | Date of cancellation of license no. 106 of 2017 | 09.05.2022 (page 58 of complaint) |
| 7. | RERA Registered/ not registered | Registration revoked by the Authority vide order dated 11.03.2024 |
| 8. | Allotment letter dated | 05.05.2018 (page 21 of reply) |
| 9. | Unit no. | K-103, tower K, first floor (page 28 of complaint) (inadvertently mention as K-401, tower k, fourth floor in proceeding dated 11.03.2025) |
| 10. | Unit area admeasuring | 541.60 sq.ft (carpet area) 99.97 sq.ft. (balcony area) |
| 11. | Date of building plan approval | 23.02.2018 |
| 12. | Environmental clearance dated | NA |
| 13. | Execution of BBA | 29.06.2018 (page 22 of complainant) |
| 14. | Possession clause as per BBA | 8 Possession 8.1 Within a period of 4 years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date"), whichever is later. |
| 15. | Due date of possession | 23.08.2022 [calculated from the date of approval of building plans](an extension of 6 months provided in view of HARERA notification no. 9/3-2020) |
| 16. | Total sale consideration | Rs.21,98,555/- [As per payment plan at page 47 of complaint] |
| 17. | Amount paid by the complainant | Rs.23,73,893/- [as per receipts, page 50-58] |

| | | |
|-----|------------------------|--------------|
| 18. | Occupation certificate | Not obtained |
| 19. | Offer of possession | Not offered |

B. Facts of the complaint

6. The complainant has made following submissions in the complaint:

- i. That the complainant on 29.06.2018, entered into apartment buyer agreement with the developer and complainant made all the payment of Rs. 23,73,893/- which is over and above the agreed amount of Rs. 21,98,555/- as mentioned in para 2 and payment plan as annexure-A which forms part and parcel of same agreement.
- ii. That complainant herein kept on following up with the respondents herein to hand over the possession and was astonished to see that the licence no. 106/2017 of developer under which his allotment was made has been cancelled by DGTCP, Haryana on account of committing 11 grave violations of fake, forged and bogus documents and tempering with the bank guarantee not only before grant of licence but after grant of licence too in spite of licensee being valid for 21.12.2022.
- iii. That on 02.02.2018, promoter/developer/licensee claimed to have his project registered with RERA under registration no. HRERA-2018/1403/299. However, there is no such RERA Registration number found over HRERA website www.haryanarera.gov.in thus developer has violated chapter II - section 3 of The Real Estate (Regulation and Development) Act, 2016. The developer sought allotment from people even before he applied for RERA registration which goes in to the root of the matter.

- iv. That on 30.06.2023 complainant served legal notice as aggrieved of the inaction on part of respondent to refund the amount of the complainant as they are in collusion with each other which resulted into the siphoning of the hard earned money of the complainant who has booked the flat with respondent.
- v. That complainant declares that the subject matter of the complaint falls within the jurisdiction of the tribunal.
- vi. That the cause of action accrued in favour of the complainant and against the respondent on 23.3.2022 as respondent failed to provide possession of the complainant as explicitly agreed upon in buyers agreement clause 8.1. The cause of action further arose on 09.05.2022 when above mentioned respondent licence cancelled by DGTCP on account of committing 11 grave violations of fake, forged and bogus documents and tempering with the bank guarantee. Thus the cause of action is still continuing.
- vii. That Hon'ble forum has the territorial jurisdiction to entertain, try and decide the present petition as complainant entered into agreement with respondent in Haryana, property in question is situated in Haryana and the respondent has its office in Haryana.

C. Relief sought by the complainant.

7. The complainant has sought the following relief(s):
 - i. Direct the respondent to refund the total amount of Rs.23,73,893/- at the prescribed rate of 10.75% per annum for the date of payment as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

- ii. Penalty for late possession/no possession @ 15% per annum from the date of approval of building plan on the amount deposited to respondents from time to time as per their payment schedule per para 2.5 & para 8.7 of the builder buyer agreement and also in accordance with section 12 of The Real Estate (Regulation And Development) Act, 2016.
 - iii. Direct the respondent to pay legal expenses of Rs.70,000/- to the complainant.
8. The present complaint was filed on 28.07.2023 and registered as complaint no. 3322/2023. 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 complainant along with the complaint. On 07.02.2024, the respondent was directed to file a reply within the stipulated time period. On 06.03.2025, Advocate Rahul Raghav appeared as a proxy on behalf of the respondent; however, the reply was still not filed. Further, on 03.09.2024, the Authority granted a last and final opportunity to the parties to appear and argue the matter. 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 was struck off for non-filing of the reply vide order dated 11.03.2025, and the matter is being decided based on the facts and documents submitted with the complaint, which remain undisputed.
9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaints can be

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

D. Jurisdiction of the Authority

10. 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

11. 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

12. 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.

13. 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.
14. 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.

E. Findings on the relief(s) sought by the complainant.

- F. I** Direct the respondent To refund the total amount of Rs.23,73,893/- at the prescribed rate of 10.75% per annum for the date of payment as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
- F. II** Penalty for late possession/no possession @ 15% per annum from the date of approval of building plan on the amount deposited to respondents from time to time as per their payment schedule per para 2.5 & para 8.7 of the builder buyer agreement and also in accordance with section 12 of The Real Estate (Regulation And Development) Act, 2016.
15. The complainant had booked a residential apartment in the Affordable Group Housing project of the respondent named "Mahira Homes-103" at Sector-103, Gurugram and was allotted a flat bearing no. K-301, 1st floor, having carpet area of 539.01 sq. ft. vide allotment letter dated 05.05.2018. As per record, out of the sale consideration of Rs.21,98,555/-, the

complainant has paid the entire amount i.e., Rs. 23,73,893/- to the respondent till date.

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. **Due date of handing over of possession:** As per clause 8 of the buyer's agreement dated 29.06.2018, the possession was to be handed over within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later.

"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 default under any part hereof and Apartment Buyer's Agreement including but not limited to the timely payment of installments 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."

18. In the instant case, the building plans were approved on 23.02.2018, and no submission was made regarding the date of environment clearance. Therefore, the due date of handing over of possession comes out to be 23.02.2022, calculated from the date of building plan approval, as the date of environment clearance is not known. Further as per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 23.02.2022 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19. As such the due date for handing over of possession comes out to be 23.08.2022.
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 frozen 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 frozen 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 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.
21. **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(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. 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., 11.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent to pay legal expenses of Rs.70,000/- to the complainant

25. The complainants are also seeking relief w.r.t litigation expenses .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.* (supra), 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 of the Act and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act.

F. Directions of the authority.

26. 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 entire paid-up amount received by it from 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. 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 not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is

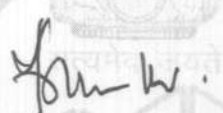


initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.
28. Complaint as well as applications, if any, stands disposed of accordingly.
29. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 11.03.2025