

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

Complaint no.: 1928 of 2024
Date of decision: 21.03.2025

Mr. Kartik
R/o: H.No. C-302 1st Floor, BPTP Amstoria,
Sector 102, Gurugram, Haryana

Complainant

Versus

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

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sh. Krishan Mohan Sharma (Advocate)
None

**Complainant
Respondent**

EX-PARTE ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Mahira Homes-104
2.	Nature of the project	Affordable group housing
3.	Area of the project	10.44375 acres
4.	RERA Registered/ not registered	Revoked vide order dated 11.03.2024 by the Authority.
5.	Unit no.	T-5-1605, 16 th floor
6.	Unit area admeasuring	643.66 sq. ft.
7.	Date of booking	03.12.2021
8.	Date of BBA	08.03.2022 [page 10 of the complaint]
9.	Possession clause	4. POSSESSION A. The developer proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later.
10.	Date of building plan approval on	25.10.2021 [as per the information provided by the respondent on website at the time of registration of project]
11.	Date of environment clearance	27.04.2022 [as per the website of SEIAA, Haryana]

12.	Due date of possession	27.04.2026 [calculated from 4 years from the date of E.C]
13.	Total Sale consideration (TSC)	Rs. 26,24,640/- [Page 17 of the complaint]
14.	Amount paid by the complainant	RS. 10,94,672/-
15.	Occupation certificate /Completion certificate	N/A
16.	Offer of possession	N/A

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant booked a residential unit in the affordable housing project namely "Mahira Homes-104A", situated at Sector 104, Gurugram, Haryana (hereinafter referred to as "the project"), being developed by the respondent. The respondent allured the complainant by giving false assurances that the possession of the allotted unit would be handed over within a reasonable time. Relying upon such assurances, the complainants paid a sum of Rs. 1,29,299/- (Rupees One Lakh Twenty-Nine Thousand Two Hundred Ninety-Nine only) [i.e., Rs. 1,28,709/- + Rs. 590/-] on 29.10.2021, as the booking amount to become eligible for the draw.
- II. That the draw of lots for allotment of units was conducted on 03.12.2021, pursuant to which Unit No. T5-1605, situated on the 16th Floor, Unit Type 2BHK+Utility-Type-1, in Tower T5, was allotted to the complainant.



- III. That thereafter, the complainant paid the next installment of Rs. 5,33,898/- on 12.12.2021 through Cheque No. 000462. In addition, an amount of Rs. 1,00,000/- was paid in cash on 10.12.2021 towards the allotment of car parking space located in the basement of the project. That in total, the complainants have paid a sum of Rs. 10,94,672/- (Rupees Ten Lakhs Ninety-Four Thousand Six Hundred Seventy-Two only) to the respondent.
- IV. That despite having received approximately 37.48% of the total sale consideration, the respondent has failed to commence any construction activity at the project site, in violation of the obligations arising out of the booking and allotment. The respondent has also failed to provide any status updates or timeline with respect to commencement and completion of construction. At present, all known contact numbers of the respondent are non-functional, and their registered office is found to be vacated, thereby constituting a clear breach of contract and abandonment of responsibilities.
- V. That the complainant has made several attempts to contact the respondent through various modes including telephonic calls and personal visits, but the respondent has failed to respond or remain accessible. The conduct of the respondent reflects a willful attempt to harass the complainants and misappropriate their hard-earned money by taking undue advantage of their dominant position. Despite full compliance by the complainants in making the demanded payments, the respondent has failed to take any effective steps towards project execution or maintain communication with the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the entire paid-up amount of Rs.10,94,672/- along-with interest to the complainant.
 5. The present complaint was filed on 02.05.2024. The authority issued a notice dated 02.05.2024 of the complaint to the respondent by speed post and also on the given email address at info@mahiragroup.com was duly served on 03.05.2024. The delivery reports have been placed in the file. Despite service of notice, the respondent has preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
 6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.
- D. Jurisdiction of the Authority:**
7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- 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)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on **11.11.2021** and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest

thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra), the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

E. Findings on relief sought by the complainant:

E.I Direct the respondent to refund the entire paid-up amount of Rs.10,94,672/- along-with interest to the complainant.

13. The complainant applied for the allotment in the affordable housing project i.e., "Mahira Homes-104" located in sector-104, Gurugram being developed by the respondent i.e., M/s Czar Buildwell Private Limited. The respondent issued an allotment letter dated 03.12.2021 in favor of the complainant and thereby intimated to the complainant about the allotment of unit no. T5-1605, tower-T5, 15th floor in the project of the respondent at the sale consideration of Rs.26,24,640/-. He has paid a sum of Rs.10.94.672/- towards the subject unit. The possession of the unit was to be offered within 4 years from the approval of building plans (25.10.2021) or from the date of environment clearance (27.04.2022), whichever is later, which comes out to be 27.04.2026 calculated from the date of environment clearance being later.

14. It is pertinent to mention that the registration of the project stands revoked under section 7 of the Act 2016, by the Authority vide order dated 11.03.2024 on account of grave violations committed by the promoter. Accordingly, the respondent company shall not be able to sell the unsold inventories in the project and the accounts of the project are frozen.
15. The Authority, considering the above mentioned facts observes that although the due date of possession has not lapsed yet, section 18 of the Act, 2016 is liable to be under the present circumstances as invoked 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** and the complainant is entitled for entire refund of the amount paid to the respondent along with the prescribed rate of interest. The relevant portion of section 18 is reproduced below:

"Section 18: Return of amount & compensation:

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

*(b) due to discontinuance of his business as a developer on account of **suspension or revocation of the registration under this Act or for any other reason,***


he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:....."

16. Thus, the Authority is of the view that the complainant is entitled to his right under section 18(1)(b) read with 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter. Accordingly, the Authority directs the respondent to refund the paid-up amount of Rs.10,94,672/- 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. (Inadvertently mentioned in the proceeding dated 21.03.2025 refund allowed after deduction as per clause 5(iii)(b) of the affordable group housing policy, 2013.)

F. Directions of the authority:

17. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - I. The respondent/promoter is directed to refund the amount i.e., Rs.10,94,640/- received by it along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realisation of the amount.
 - 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: 21.03.2025