

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

Complaint no.: 304 of 2023

Date of decision: 21.03.2025

Ms. Purnima Kesari
R/o: Plot No. 92-93, Gali No.7 Bhawani Enclave
Bhondasi, 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. Akash Godhvani

Sh. Rahul Raghav Proxy Counsel

**Complainant
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 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. No.	Particulars	Details
1.	Name and location of the project	"Mahira Homes" at sector 104, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	5.4037 acres
4.	DTCP license no.	66 of 2021 dated 07.09.2021 valid up to 06.09.2026
5.	RERA Registered/ not registered	Registration revoke
6.	Unit no.	T3-2002, 20 th floor & Tower-T3 (As per page no. 15 of the complaint)
7.	Unit area admeasuring	642.36 sq. ft. (Carpet area) (As per page no. 15 of the complaint)
8.	Allotment letter	03.12.2021 (As per page no. 15 of the complaint)
9.	Date of execution of flat buyer's agreement	Not executed
10.	Date of building plan approval	25.10.2021 (taken from another complaint of the same project)
11.	Environmental clearance dated	27.04.2022 (taken from another complaint of the same project)
12.	Possession clause	NA
13.	Due date of possession	27.04.2026 [Note: Due date of possession to be calculated 4 years from the date of environmental clearance dated 27.04.2022 being later]
14.	Total sale consideration	Not on record
15.	Amount paid by the complainant	Rs.11,17,107/- (As per facts stated by the complaint)

16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant through e-draw dated 03.12.2021 was allotted a unit bearing no. T3-2002, Tower-3, 20th Floor having carpet area of 642.36 sq. ft. and balcony area of 148.17 sq. ft in the project of the respondent named "Mahira Homes 104" situated at Sector 104 Gurugram.
- II. That as per the terms and conditions of the project, the complainant paid 20% amount of the unit allotted within 15 days from the date of allotment. The 20% amount of the allotment i.e. ₹ 5,32,931/-including taxes was paid on 16.12.2021 as evident from the demand letter dated 16.12.2021.
- III. That later on, the complainant opted for one (1) open Car parking facility in the project under the terms and conditions of Haryana affordable Housing Policy 2013 and HRERA 2017. The agreed consideration was ₹ 1,25,000 including taxes, which was paid against the demand letter raised on 13.01.2022 by the complainant.
- IV. That subsequently, again the demand was raised for 12.5% of the project amount i.e. ₹ 3,30,705/- including taxes on 03.05.2022 via demand letter which was paid on 29.05.2022 and was acknowledged by the respondent.
- V. That another demand was raised for 12.5% of the project amount i.e. ₹ 3,30,704/- including taxes on 30 January 2023 via demand letter but due to financial crisis complainant decided to surrender the unit(T3-2002) as the complainant was unable to manage the amount of the demand. The request for the cancellation of the unit was submitted on 05.02.2023 via E-mail, as per the guidance of the respondent and all the required documents were submitted to the respondent on 04.04.2023, notifying

the reason for cancellation to the respondent. The cancellation request was duly accepted by the respondent and assured to pay the refund amount within 90 days from the date of cancellation.

- VI. That as per the prescribed timeline, the complainant did not get the refund, even after several visits and follow ups from the respondent and it's been more than nine 9 months since the cancellation of the unit in The Project. Hence, the complainant raised complaint under HARERA seeking help to take the necessary action against the respondent to get the refund at the earliest, considering the medical emergency in the complainant's family.

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.11,17,107.40/- along-with interest for delayed period of refund to the complainant.

5. **Reply By Respondent:** The authority observes that vide proceedings dated 15.03.2024, Sh. Rahul Raghav proxy counsel has appeared on behalf of the respondent and sought an adjournment to file reply in the matter. It was observed that despite specific directions for filing of reply, the respondent has failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, the defence of the respondent is hereby struck off.

D. Jurisdiction of the Authority:

6. 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

7. 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

8. 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.

9. 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.
10. 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.”

11. 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.11,17,107/- along-with interest to the complainant.

12. 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. T3-2002, tower-T3, 20th floor. The complainant has paid a sum of Rs.11,17,107/- towards the subject unit.

13. 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.
14. The Authority, considering the above mentioned facts opines that although the due date of possession has not lapsed yet, 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 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:....."
15. 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.11,17,107/- 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:

16. 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. 11,17,107/- 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.
17. Complaint stands disposed of.
18. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2025