

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

Complaint No.: 5358 of 2023
Date of filing: 14.12.2023
Date of order: 28.08.2025

Rishi Kapoor Yadav

R/o: - H.No. 25, Behind Govt. Girls School, Lakhnaula,
Gurugram-122004

Complainant

Versus

M/s Czar Buildwell Pvt. Ltd. & Ors.

Regd. Office at: - 301 & 302-A, Global Foyer, Sector-43,
Golf Course Road, Gurgaon-122009

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Harshit Batra (Advocate)

None

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 there under 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
2.	Project location	Sector 95, Gurugram
3.	Nature of Project	Affordable Housing Project
4.	RERA registration	32 of 2020 dated 08.10.2020
5.	Unit No.	Not allotted
6.	Unit Area	N/A
7.	Acknowledgement receipt dated	25.10.2021 [page no. 40 of the complaint]
8.	Builder Buyer Agreement	Not executed
9.	Possession clause	N/A
10.	Due date of possession	N/A
11.	Total sale consideration	N/A
12.	Amount paid by the complainant	Rs. 2,65,630/- [As mentioned in additional documents filed by the respondent on 11.08.2025 clarifying amount paid by the complainant]
13.	Occupation Certificate	N/A
14.	Offer of Possession	N/A

B. Facts of the complaint

3. The complainant has made the following submissions: -

- The complainant had booked a unit in the project of the Respondent known under the name and style of "**MAHIRA PROJECTS 95**" at Village Dhorka, Sector 95, Gurugram built under the Affordable Housing Policy, 2013 and hence is an allottee under section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

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- b) the respondent, namely, Czar Buildtech Pvt Ltd. is a company duly incorporated and registered under the Companies Act, 2013 that is responsible for the construction and development of the said affordable housing colony and hence falls within the meaning of Section 2(zk) of the Act.
- c) Around 2020, the respondent was blazoning itself as one of the supreme real estate developers in the market responsible for the development of affordable housing project. It predominantly advertised the affordable 2BHK and 3BHK apartments and assured of its fine development status, speedy procurement of the necessary licenses and permissions required from the competent authority for its affordable housing colony development, timely delivery of possession without any delay, and the stellar quality of its developments along with great connectivity.
- d) Believing and relying upon the said assurances and representations of the respondent, the complainant applied for booking of a residential unit in the said affordable housing project of the respondent by paying an amount of Rs. 2,65,630/- via cheque no. 468817 and 468818 dated 27.10.2021.
- e) The *malafide* intentions of the respondent are foreseen from the fact that although the unit was booked way back in the year 2021 yet no specific unit has been allotted in favour of the complainant till date.
- f) However, lately, it has come to the knowledge of the complainant that all the promises and assurances made by the respondent and his representatives are nothing but a web of false promises in order to trap the innocent allottees and grasp their hard-earned money for the personal gain.

- g) The respondent delayed the allotment of a unit in favour of the complainant and had failed to provide/execute any lawful allotment letter even after various request and reminders by the complainant. That the complainant had invested all his savings in the said affordable project of the respondent in a hope that he shall be able to live in his dream house but the respondent shattered all the dreams of the complainant and grasped all the hard-earned money of the complainant.
- h) The *malafide* intentions of the respondent are crystal clear from the fact that even after a payment of Rs. 2,65,630/- on 27.10.2021, the Respondent raised an illegal demand of Rs. 9,93,503/- on 30.10.2021, i.e., within 3 days of the initial payment of booking amount. To such illegal demand, the complainant replied and requested for the allotment of a specific unit in favour of the complainant along with the execution of the builder buyer agreement as the further payments of outstanding payments by the complainant would have been availed from a bank/financial institution, the pre-requisite for which was allotment of a unit but the respondent did not pay any heed to such requests of the complainant and no allotment letter was issued by the respondent in favour of the complainant. Moreover, upon the illegal demand being raised by the respondent, an email dated 30.10.2021 was written by the complainant wherein the allotment details were sought.
- i) Even after various telephonic requests, reminders, and emails by the complainant, the respondent turned a blind eye towards the complainant and failed to allot a specific unit and execute a lawful agreement to sale in lieu of the unit assigned to the complainant.

- j) The complainant, while applying his due diligence, visited the project in question in order to personally request the respondent for proper allotment of the unit and execution of the agreement to sale and to know the actual status of the construction of the project.
- k) After personally examining the site of the project, the complainant was in a state of utter shock and dismay as even the basic construction of the project was not commenced and therefore visited the office of the respondent and questioned regarding the status of the construction of the project and allotment of the unit in favour of the complainant but the respondent did not give any heed to the said question of the complainant. The respondent instead of giving any satisfactory answer to the grievances of the complainant threatened the complainant to forfeit the booking amount in case of non-payment of the outstanding dues.
- l) Being aggrieved by the acts of no allotment of a unit and non-execution of agreement to sell by the respondent, the complainant visited the office of the respondent and requested the refund of the entire paid amount by the complainant.
- m) The respondent accepted the said request of the complainant and agreed to refund the entire paid-up amount along with interest on a pre-condition that the original receipt/documents be deposited back to the respondent.
- n) The complainant being an innocent layman, fell into the trap of the Respondent, and deposited the original acknowledgement receipt. At this instance, a checklist was filled by the parties where under it is also clarified that no allotment or builder buyer agreement was executed between the parties. This additionally corroborates the *malafide* conduct of the respondent. However, even after returning the original

acknowledgement, the respondent failed to provide the refund of the entire amount paid by the complainant.

- o) It was the obligation of the respondent to allot a unit to the complainant. Due to miserable failure of the respondent, full refund with interest is ought to be provided to the complainant.
- p) In lieu of the same, the complainant is filing the present complaint before the Authority in order to seek the refund of the hard-earned money of the complainant.

C. Relief sought by the complainant.

4. The complainant has sought following relief:

- i. Direct the respondent to refund the total amount paid to the Complainant at the prescribed rate @ MCLR + 2% from date of payment till actual realization of the same.

D. Reply by the respondent.

- a) That present complaint was filed on 14.12.2023 and registered as complaint no. 5358 of 2023. The authority issued a notice dated 14.12.2023 to the respondent by speed post and also on the given email address at kumarprince793.com on 15.12.2025. The respondent was directed to file reply in the registry, subject to cost of Rs.5,000/-. The respondent neither filed reply not paid the cost imposed on it despite adequate opportunity. Thus, vide proceedings dated 15.05.2025, the defence of the respondent was struck off.
5. 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 documents and submission available on record.

E. 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.

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E. I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

8. 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)(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.

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** 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. (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on relief sought by the complainant

F.1. Direct the respondent to refund the total amount paid to the complainant at the prescribed rate @ MCLR + 2% from date of payment till actual realization of the same.

12. The complainant booked a unit on 25.10.2021 in the project "Mahira Homes-95" by the respondent/builder under the Affordable Group Housing Policy 2013. Though allotment letter qua the unit was never issued by the respondent neither buyer's agreement was executed between the parties. The complainants have paid a total sum of Rs.2,65,630/-.

13. The complainant submitted that they paid an amount of Rs. 2,65,630/- through cheque dated 27.10.2021, for which receipt was also issued by the respondent on 27.10.2021. Vide email dated 30.10.21 the complainant wrote to the respondent to issue allotment letter. However, the respondent paid no heed such request of the complainant. Hence, the complainant wished to withdraw from the project and sought refund of the paid-up amount.

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14. Upon perusal of the documents on record, the authority observes; **Firstly**, the complainant has made a payment of Rs. 25,65,630/- to the respondent towards booking amount and the respondent has also issued acknowledgment receipt against the same. **Secondly**, the respondent upon receipt of the booking amount has failed to issue any allotment letter in favour of the complainant allotting a unit in the said project. The respondent neither stated any reason as to why an allotment letter was not issued by respondent despite receiving the said amount from the complainant neither the respondent appeared before the Authority to pursue the matter. **Thirdly**, till date no amount has been refunded to the complainant despite of the complainant requested for refund of paid-up amount as the complainant do not want to continue with the project.

15. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

*In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. **In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project.***

16. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amount received from the

complainant. Thus, the complainant is entitled to get refund of the entire paid-up amount.


G. Directions of the Authority

19. 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 paid-up amount of Rs. 2,65,630/- received by it from the complainant within 90 days from the date of this order.
- II. In the event of non-compliance within the prescribed period, the respondent shall be liable to pay interest on the refundable amount at the rate stipulated under the provisions of the Real Estate (Regulation and Development) Act, 2016, i.e., @ 10.85% p.a. calculated from the date of expiry of the 90-day period until the date of actual realization of the amount.
- 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.

20. Complaint stands disposed of.

21. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.08.2025