

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

Complaint no.: 4587 of 2023
First Date of Hearing: 17.01.2024
Date of Decision: 18.09.2025

Sh. Santosh Sharma W/o Rajesh Sharma
R/o: - C-501, BPTP Park Seren,
Sector-37 D. Gurugram-122103

Complainant

Versus

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

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sushil Yadav(Advocate)

Complainant

None

Respondent

ORDER

1. The present complaint dated 06.10.2023 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

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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 complainants, *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-103" at Sector 103, Gurugram, Haryana
2.	Nature of the project	Affordable group housing colony
3.	Project area	5.4037 acres
4.	DTCP license no.	31 of 2019 dated 01.03.2019 Valid up to 28.02.2024
5.	RERA Registered/ not registered	Registration revoked by the Authority vide order dated 11.03.2024
6.	Allotment letter dated	01.07.2019 [Page 44 of complaint]
7.	Unit no.	507, 5 th floor, Tower C [Page 20 of complaint]
8.	Unit area admeasuring	586 sq. ft. (Carpet area) [Page 20 of complaint]
9.	Date of building plan approval	29.03.2019 [As per information provided by planning branch of the Authority]
10.	Environmental clearance dated	29.01.2020 [As per information provided by planning branch of the Authority]
11.	Execution of BBA	09.02.2023

		[Page 14 of complaint]
12.	Possession clause as per Affordable Housing Policy, 2013	1(IV) of the Affordable Housing Policy, 2013 <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>
13.	Due date of possession	29.07.2024 [Due date of possession is calculated from the date of environmental clearance i.e., 29.01.2020 being later + 6 months on account of COVID-19]
14.	Total sale consideration	Rs.24,17,940/- [As per SOA dated 17.07.2019 on page 46 of complaint]
15.	Amount paid by the complainant	Rs.22,65,696/- [As per SOA dated 21.04.2023 filed during the proceedings on 18.09.2025]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Refund request by the complainant	By virtue of present complainant filed on 06.10.2023

B. Facts of the complaint:

3. The complainant has made the following submissions: -



- I. That the respondents gave advertisement in various leading newspapers about their forthcoming project named "Mahira Homes - 103", Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements, complainant booked an apartment/flat measuring 586 Sq.ft . in aforesaid project of the respondents for total sale consideration is Rs 24,17,940/-.
- II. The complainant made payment of Rs. 22,65,696/- to the respondents vide different cheques on different dates.
- III. That flat buyer's agreement was executed on 09.02.2023 and as per bba the respondents had allotted a unit/flat bearing no.E-507, in Tower C having carpet area of 586 sq. ft. to the complainant. That as per para no.4 (a) of the agreement, the respondent had agreed to deliver the possession of the flat within 4 years from sanctioning of building plan or grant of environmental clearance whichever is later, but nothing has been disclosed by builder. It is pertinent to mention here that the construction has not been started of the said project, but respondent has taken more than 90% of the total sale consideration of the said unit.
- IV. That the complainant 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 complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It



appears that respondents has played fraud upon the complainant. The only intention of the respondents was to take payments for the flat without completing the work and not handing over the possession on time. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant.

- V. That despite receiving of more than 90% approximately payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondents has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- VI. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondents to deliver the flat but was not completed within time for the reasons best known to the respondents; which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently.
- VII. That due to this omission on the part of the respondents the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondents had given possession of the flat on time. That as per clause 2.3 of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq.ft. per month of the super area of the flat. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/- per sq.ft per month for the period of delay is unjust and the respondent has exploited



the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of rs.5/- per sq.ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges @ 24% per annum interest on delayed payment.

- VIII. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.
- IX. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainants, but respondents has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to refund the paid-up amount along with interest at the prescribed rate.
5. On 21.02.2024, POA was filed on behalf of the respondent and requested for adjournment for filing reply. On 21.02.2024 and 20.03.2024, Shri Rahul Raghav (proxy counsel) appeared on behalf of the respondent and was directed to file reply within stipulated time with cost failing which defence of respondent may be struck off.
6. Thereafter, vide order dated 25.10.2024, last opportunity was granted to the respondent to file reply in the registry of the Authority within a period of 15 days. However, despite specific directions, the respondent failed to file the written reply and has failed to comply with the orders of the Authority. It shows that the respondent is intentionally delaying the proceedings of the Authority by non-filing of written reply. Hence, it's defence is ordered to be struck off for not filing reply and case shall be heard on the basis of facts available on record.

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. Entitlement of the complainant for refund:

E.I Direct the respondent to refund an amount of the paid up amount along with interest at the prescribed rate.

13. The complainants had booked a residential apartment in the Affordable Group Housing project of the respondent named "Mahira Homes-103" at Sector-103, Gurugram by paying a sum of Rs.1,15,000/- and were allotted a flat bearing no. 1306, Tower-C, 13th Floor having carpet area of 586 sq.ft. vide allotment letter dated 01.07.2019. The BBA was executed between the parties regarding the said allotment on 15.01.2020 and the complainants have paid Rs 22,65,696/- as

consideration apparent from the SOA dated 21.04.2023 filed during the proceedings dated 18.09.2025 against total sale consideration of Rs 24,17,940/- to the respondent. The Authority observes that 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 the building plan approval and environmental clearance in respect of the said project on 29.03.2019 and 29.01.2020 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 29.07.2024.

14. 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 fulfillment 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, 2016. 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.

15. The Authority considering the above mentioned facts opines that 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 than the complainants shall be entitled for entire refund of the amount paid to the respondent along with the prescribed rate of interest. The relevant portion is reproduced herein below for the ready reference:

"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. 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 therefore, the promoter cannot carry out the business in presence of the said circumstances, also due to the promoter's serious violations, there seems no possibility of completing the said project by the due date. Thus, the Authority is of the view that the complainants are entitled to their 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. Accordingly, the Authority directs the respondent to refund the paid-up amount of Rs.22,65,696/- received by it along with interest at the rate of 10.85% 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.

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):
- The respondent/promoter is directed to refund the paid-up amount of Rs.22,65,696/- received by it along with interest



at the rate of 10.85% 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 cost of Rs. 5,000/- imposed on respondent vide order dated 20.03.2024 shall be included in the decretal amount.

18. Complaint stands disposed of.

19. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.09.2025

HARERA
GURUGRAM