BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**3985 of 2024**
Date of filing of complaint:	**09.09.2024**
Date of Order:	**30.10.2025**

Arjun Rai
R/o: 153, H Block, Dharam Colony,
Palam Vihar Extension, Gurugram-
122001 **Complainant**

Versus

Mega Infratech Private Limited.
Regd. Office at: D-64, Defence
Colony, New Delhi-110024 **Respondent**

CORAM:
Shri Phool Singh Saini Member

APPEARANCE:
Sh. Sushil Yadav (Advocate) Complainant
Ms. Ankur Berry (Advocate) Respondent

ORDER

1. The present complaint dated 09.09.2024 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 allottee 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	"Zara Roma" at sector 95 B, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	9.0625 acres
4.	DTCP license no.	28 of 2020 dated 07.10.2020 valid up to 06.10.2025
5.	Name of licensee	M/s Mega Infratech Pvt. Ltd. and another
6.	RERA Registered/ not registered	Registered vide no. 57 of 2022 dated 27.06.2022 valid up to 06.10.2025
7.	Unit no.	Flat no. 3, 1st floor & Tower-I (As per page no. 14 of the complaint)
8.	Unit area admeasuring	645.65 sq. ft. (Carpet area) & 87.49 sq. ft. (balcony area) (As per page no. 14 of the complaint)
9.	Environment clearance	03.12.2021 (As per page no. 18 of the reply)
10.	Approval of building plans	14.02.2022 (As per page no. 29 of the reply)
11.	Allotment letter	14.11.2022 (As per page no. 58 of the complaint)
12.	Date of execution of agreement for sale	15.03.2023 (As per page no. 13 of the complaint)
13.	Possession clause	***7. POSSESSION OF THE UNIT*** ***7.1*** *Within 3 months from the date of issuance of occupancy certificate, the promoter shall offer the possession of the unit to the allottee. Subject to force majeure circumstances, receipt of occupancy certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the promoter in terms of this agreement and not being in default under any part hereof including but not limited to the timely*

		payment of installments as per the payment plan, stamp duty and registration charges, ***the promoter shall offer possession of the unit 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.*** (As per page no. 30 of the complaint)
14.	Due date of possession	03.12.2025 (**Note:** Due date to be calculated 4 years from the date of environment clearance i.e., 03.12.2021, being later)
15.	Total sale consideration	Rs.27,99,220/- (As per page no. 20 of the complaint)
16.	Amount paid by the complainant	Rs.7,06,803/- (As per receipt information on page no. 59-63 of the complaint) (Inadvertently mentioned as Rs.5,71,216/- in the proceedings of the day dated 30.10.2025)
17.	Occupation certificate	N/A
18.	Offer of possession	Not offered
19.	Demand letter	14.11.2022 (As per page no. 59 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

I. That the respondent gave advertisement in various leading newspapers and electronic media about their forthcoming project named "Zara Roma" Sector 95 B 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 respondent in the aforementioned advertisements the complainant, booked residential flat admeasuring 733.14 sq. ft. in aforesaid project of the respondent for total sale

consideration is Rs.27,99,220/- which includes BSP, two-wheeler parking, IFMS, PLC etc. Out of the total sale consideration the complainant made payment of Rs.7,06,803/- (As per receipt information on page no. 59-63 of the complaint) to the respondent vide different cheques on different dates, the details of which are annexed with the complaint.

II. That as per buyer's agreement dated 15.03.2023, the respondent had allotted a unit no. 3 in Block-I on 1st floor having carpet area of 645.65 sq. ft. and balcony area of 87.49 sq. ft. to the complainant. As per para 7.1 of the buyer's agreement dated 15.03.2023, the respondent had agreed to deliver the possession of the flat within four years from the date of building plan or grant of environmental clearance, whichever is later.

III. That the complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the residential flat without completing the work. Despite receiving all payments as demanded by the respondent for the said residential flat and despite repeated requests and reminders over phone calls, emails and personal visits of the complainant, the respondent has failed to keep their promise as mentioned in builder buyer's agreement.

IV. That as per builder buyer's agreement the payment plan was construction linked and as per the plan, the complainant has made the payment of Rs.7,06,803/- (As per receipt information on page no. 59-63 of the complaint) in three parts but when the complainant visited to

see the construction of the project he was shocked to see that the respondent has not even started the construction for which the respondent has taken the amount of Rs.7,06,803/- (As per receipt information on page no. 59-63 of the complaint) from the complainant.

V. That it is pertinent to mention here that the Authority has suspended the registration of the said project and even after suspension of the said project of the respondent has demanded the amount from the complainant. It clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

VI. That due to this omission on the part of the respondent the complainant has been suffering from disruption on their arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the residential flat on time.

VII. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting to the office of the respondent to start the construction of the project or to refund the amount along with interest @ 15% per annum on the amount deposited by the complainants but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount and wrongfully gain 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 over the same at prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:

I. That the present complaint has been filed against the Affordable Group Housing project namely, Zara Roma. The building plans qua the said project were approved on 14.02.2022. Further the Environmental Clearance for construction of the Affordable Group Housing Colony was on 03.12.2021.

II. That thereafter the respondent duly applied for permission to erect the buildings in Affordable Group Housing Colony under licence no. 28 of 2020 and the Chief Town Planner, Haryana duly approved the same vide Memo No. ZP-1469/SD(DK)/2022/3714 dated 14.02.2022. The said project was also duly registered by this Hon'ble Authority vide Registration No. 57 of 2022 on 27.06.2022.

III. That the State of Haryana, vide notification dated 18.06.2021 published the Zonal Master Plan of the ESZ around Sultanpur National Park. It may further be noted that the project 'Zara Roma' being located within 10 kilometers of the Sultanpur National Park was hence required to obtain wildlife clearance and accordingly, the respondent company on 27.07.2021, had applied for the same on the online portal of MOEFCC in conformity with the procedure notified vide guidelines for taking non-forestry activities in wildlife habitats dated 19.12.2012. That the application of the respondent company has been kept in abeyance whereas the Principal Chief Conservator of Forests-cum-

Chief Wildlife Warden, Additional Principal Chief Conservator of Forests, In Charge Chief Conservator for Forests (Wildlife), Gurugram and Chief Conservator for Forests (Wildlife), Gurugram have been giving clearance to other affordable Group Housing colonies situated in Sector-95, Gurugram at similar distance from Sultanpur National Park.

IV. That further the Principal Chief Conservator of Forests-cum-Chief Wildlife Warden, Additional Principal Chief Conservator of Forests, In Charge Chief Conservator for Forests (Wildlife), Gurugram and Chief Conservator for Forests (Wildlife), Gurugram have informed the respondent company that the application of the respondent company could not be processed owing to order dated 03.06.2022 of the Hon'ble Supreme Court in *Writ Petition (Civil) No. 202 of 1995; in Re: T.N. Godavarman Thirumulpad versus Union of India & Ors.* The respondent being aggrieved since the project could not start within the due timelines because of delay caused by failure to receive the wildlife clearance which is being kept pending since a long time without any cause or justification, filed the ***CWP No. 3563 of 2023 titled Mega Infratech Pvt. Ltd. and Another vs State of Haryana and Others.***

V. That further the respondent company, owing to the inordinate and inexplicable delay on part of the Principal Chief Conservator of Forests-cum-Chief Wildlife Warden, Additional Principal Chief Conservator of Forests, In Charge Chief Conservator for Forests (Wildlife), Gurugram and Chief Conservator for Forests (Wildlife), Gurugram, in processing the application of the respondent company, have suffered immense financial hardship due to investments and various loans and also due to creation of third-party rights as several units have been booked by

various allottees. The respondent company understanding the obligation under the Act of 2016 and acknowledging that for almost 2 years the respondent has not been able to commence the construction of the project for no fault of their own, filed an amendment application to get the writ decided in time bound manner and further that no-coercive steps be taken against the respondent on account of non-completion/delay in completion of the project during the pendency of the writ petition.

VI. That the delay in the commencement of the project has been due to inordinate delay suffered by the respondent and the respondent company has already clarified its stand that it will be pressing for the period taken for taking a decision upon the Wildlife Approval as zero period, since the same is not due to any inaction or omission of the respondent company. This being said it is also to be noted that the present complaint is premature and ought to be dismissed outrightly, since the due date for completion of the project being in February, 2026 is yet to arrive.

VII. That the complainant applied for a residential apartment under the project name "Zara Roma" located in the village of Garhi Harsaru, Sector-95B, Gurugram, Haryana, according to the Affordable Housing Policy 2013. In the e-draw of lots held on 10.11.2022, the apartment no.3 on 1st floor in Block/Tower-I was allocated to the complainant, with a carpet area of 645.65 sq. ft. and a balcony area of 87.49 sq. ft. The allotment letter, dated 14.11.2022 being issued in terms of the Affordable Housing Policy 2013 (as amended from time to time) duly clarified that the letter of allotment did not entitle the complainant to

any rights in the apartment till the receipt of amount payable till allotment and execution of apartment buyer's agreement.

VIII. That after allotment of apartment to the complainant, the respondent sent demand letter dated 14.11.2022, as per the prescribed legal provisions of the Affordable Housing Policy 2013. The demand letter dated 14.11.2022 was for 25% of total sale consideration being Rs.6,99,805/-. Out of the said amount the complainant has only paid Rs.7,06,803/- (As per receipt information on page no. 59-63 of the complaint) which is duly admitted by the complainant.

IX. That the bare perusal of the above-mentioned provision of the Affordable Housing Policy 2013, the developer is entitled to collect up to 25% of the total flat cost at the time of allocation. Additionally, it is emphasized that the respondent has only requested and received 25% of the total flat cost during the allotment of apartment to the complainant and nothing further, adverse or illegal has ever been demanded by the respondent.

X. That on perusal of the above-mentioned notifications and provisions, it is clarified that in the event a successful allottee cancels/surrender their allocation, the colonizer is authorized to deduct the specified amount as per the notification. It is submitted that the respondent is entitled to deduct the amount of Rs.25,000/- and 3% of the flat's cost since the complainant intends to voluntarily cancel his allotment.

XI. That, it is evident that the entire complaint of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the present complaint is filed by the complainant deserves to be dismissed with heavy costs.

XII. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the relief as prayed by the complainant are sustainable in the eyes of law. That the present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

E. 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:

E.I Territorial jurisdiction

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

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) 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.

8. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

9. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as wildlife clearance as the project is located within 10 kilometers from the Sultanpur National Park and the project could not start within the due timelines because of delay caused by failure to receive the wildlife clearance which is being kept pending since a long time without any cause or justification, filed the ***CWP No. 3563 of 2023 titled Mega Infratech Pvt. Ltd. and Another vs State of Haryana and Others.*** As per clause 1 (iv) of the Affordable Housing Policy, 2013, the possession of the apartment is to be delivered within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is earlier. In the present case, the date of grant of Environmental Clearance is 03.12.2021. Thus, the due date of possession of unit comes to 03.12.2025. The matter regarding wildlife clearance was pending in Hon'ble High Court of Punjab and Haryana since 2023 but the environmental clearance was received way back in 2021 which means that construction of the project to be get started in 2021 itself which has not yet started. Moreover, there is no stay or directions of Hon'ble High Court of Punjab and Haryana has been place on record. Further, the Hon'ble Supreme Court of India in the cases ***of***

Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 observed as under: -

> *"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

10. The respondent cannot take benefit of its own wrong. Thus, the contention of the respondent stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the paid-up amount along with interest over the same at prescribed rate of interest.

11. The complainant was allotted a unit in the project of respondent "Zara Roma", in Sector-95 B, Gurugram vide allotment letter dated 14.11.2022 for a total sum of Rs.27,99,220/-. An agreement for sale was executed between the parties on 15.03.2023 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.7,06,803/. As per clause 1 (iv) of the Affordable Housing Policy, 2013, the possession of the apartment is to be delivered within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Clause 1(iv) of the Policy of 2013 is reproduced below for ready reference:

> ***1.***
> *(iv) All such projects shall be required to be necessarily completed* ***within 4 years from the approval of building plans or grant of environmental clearance certificate, whichever is later.*** *This date shall be referred to as the "date of commencement of project" for the purpose of this policy.*

(Emphasis supplied)

12. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 03.12.2021. Therefore, the due date of possession comes to 03.12.2025.

13. In present complaint, the relief sought by the complainant in the complaint is of refund as per the provisions of the Act of 2016, as the complainant intends to withdraw from the project. As per the documents placed on record with the complaint, the Authority observed that a request for refund of the paid-up amount was made by the complainant on 09.09.2024 i.e., by the filing of the present complaint.

14. The counsel for the complainant vide proceedings of the day dated 30.10.2025 stated that the complainant intends to withdraw from the project as the commencement of the construction work is yet to happen and registration has also been cancelled by the Authority and hence, requests for allowing the refund of the paid-up amount as per the Affordable Housing Policy, 2013 even if the deductions under the policy is admissible.

15. Now when the complainant approached the Authority to seek refund, the respondent already clarified their stance that the complainant is entitled to refund as per clause 5(iii)(h) of Affordable Housing Policy, 2013 in case of surrender of flat by any successful allottee, the amount of Rs.25,000/- can be forfeited in addition to the following:

S. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Up to 1 year from the date of commencement of project	1% of the cost of flat
(cc)	Up to 2 years from the date of commencement of project	3% of the cost of flat

(dd)	After 2 years from the date of commencement of project	5% of the cost of flat

16. In the present case, the complainant has made a request for refund on 09.09.2024 i.e., after 2 years from the commencement of the project i.e., 03.12.2021(date of EC). Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per Clause 5(iii)(h) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/ plus 5 % of the cost of the flat.
17. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
18. The authority hereby directs the promoter to return the amount received by him i.e., Rs.7,06,803/- after deducting the amount of Rs.25,000/- plus 5% of the cost of the flat along as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest at the rate of 10.85% (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 filing of complaint i.e., 09.09.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. 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 amount i.e., **Rs. 7,06,803/-** received from the complainant-allottee after deducting the amount of Rs.25,000/- plus 5 % of the cost of the flat as per clause 5(iii)(h) of Affordable Group Housing Policy, 2013 along with interest on such balance amount 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 filing of complaint i.e., 09.09.2024 till the actual date of refund of the amount.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stand disposed of.

21. File be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 30.10.2025