

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

Complaint no.: 5138 of 2024
Date of filing complaint: 21.10.2024
First date of hearing: 06.02.2025
Date of decision: 23.12.2025

Mrs. Shivani**Resident of:** DLF, Woodland Height, Flat No. – 033, Tower-V, Rajapura, Jigani, Bangalore- 560105**Complainant****M/s Sai Aaina Farms Private Limited****Regd. office:** 311A, Global Foyer Mall, Golf Course Road, Sector 43, Gurugram- 122009**Respondent****CORAM:**

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Sh. (Advocate)

Complainant

None

Respondent

EX-PARTE ORDER

1. The present complaint has been filed by the complainants/allottees 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 provisions 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 68, Gurugram, Haryana
2.	Nature of the project	Affordable group housing colony
3.	Project area	9.96875 acres
4.	DTCP license no.	106 of 2017 dated 22.12.2017
5.	Name of licensee	Mohan investment and properties Pvt. Ltd. and others.
6.	Date of cancellation of license no. 106 of 2017	09.05.2022 (Taken from another case of the same project i.e., CR/3322/2023 decided on 11.03.2025)
7.	RERA Registered/ not registered	Registration revoked by the Authority vide order dated 11.03.2024
8.	Allotment letter dated	07.05.2018 (Page no. 18 of complaint)
9.	Unit no.	G-1004, tower G, 10 th floor (Page no. 26 of complaint)
10.	Unit area admeasuring	644.39 sq. ft. (carpet area) 124.06 sq. ft. (balcony area) (Page no. 26 of complaint)
11.	Date of building plan approval	23.02.2018 (As per information provided by Planning Branch of the Authority)
12.	Environmental clearance dated	05.06.2018 (As per information provided by Planning Branch of the Authority)
13.	Date of execution of buyer's agreement	26.07.2018 (Page no. 22 of complaint)
14.	Possession clause as per BBA	8. Possession "8.1 Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely

		<p><i>complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter /Developer proposes to offer possession of the Said Apartment to the Allottee within a period of 4 year from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Dote"), whichever is later."</i></p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(Page no. 31 of complaint)</p>
15.	Possession clause as per Affordable Housing Policy, 2013	<p>1(IV) of the Affordable Housing Policy, 2013</p> <p><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></p>
16.	Due date of possession	<p>05.12.2022</p> <p>(Note: - calculated from the date of environmental clearance being later and an extension of 6 months provided in view of HARERA notification no. 9/3-2020)</p>
17.	Basic sale consideration	<p>Rs.26,27,548/-</p> <p>(As per payment plan at page 45 of complaint)</p>

18.	Total sale consideration	Rs.28,37,754/- (As per SOA dated 19.04.2021 at page no. 19 of complaint)
19.	Amount paid by the complainant	Rs.28,37,754/- (As per SOA dated 19.04.2021 at page no. 19 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a) That, in the elaborate advertisements, assurances, representations and promises made by respondent, the complainant considered booking a unit in the above said and the respondent tentatively allotted a unit bearing no. G-1004, and-measuring 768.45 sq. ft., 10th floor, in Block-G of the project having total sale consideration of Rs.28,37,754/-.
- b) That pursuant to the booking and allotment of the unit, a builder buyer agreement dated 24.07.2018 was executed between the parties, wherein the respondent transferred all the rights and duties of the unit. It also included all the details of the project such as amenities promised, site plan, payment schedule etc. The complainant had already paid the amount of Rs.28,37,754/-. The complainant paid the amount as per the payment plan mentioned in the Annexure-3 of the builder buyer agreement.
- c) That as per clause 5.1 of the builder-buyer agreement, the respondent undertook to complete the construction work of the tower in which the unit of the complainant is situated within the period of 3 years from the date of execution of the agreement and thereafter a grace period of 6 months in case of any force majeure events happened which halts or slow down the pace of the construction. As per the possession clause, the respondent had to handover the physical possession of the unit 01.11.2022, after giving the benefit of the grace period.

- d) That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give satisfactory response to the complainants regarding the status of the possession and was never definite about the delivery of the possession. Some or the other reason was being given in terms of some dispute regarding land or shortage of resources etc.
- e) That the respondent intimation of possession of unit booked by the complainants, informed that the construction work of the unit is incomplete. However, at that point of time also, the respondent had not obtained the occupation certificate from the competent authority. it is also pertinent to mention that construction work is on hold and failed to deliver on time.
- f) That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of the Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of the Rules, 2017.
- g) That the respondent is not only guilty of deficiency in services by not fulfilling its promises in due course of their services towards its helpless consumers but also for mental harassment to the complainants by misguiding and misrepresentation of facts which amounts to fraudulent and unfair trade practices.
- h) That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract.

- i) That as per section 18 of the Act 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottee of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale. In addition to the abovementioned provision, the respondent is also bound by the Haryana Real Estate Regulation Rules, 2017, which lists the interest to be computed while calculating compensation to be given by a promoter to an allottee in case of a default.
- j) That the complainants after losing all the hope from the respondent company, after being mentally tortured and also losing considerable amount, is constrained to approach this Authority for redressal of his grievance. Further, the complainant herein reserves his right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Authority.
- k) That, the complainants further declare that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other tribunal.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund the entire amount paid by the complainants along with prescribed interest from the date of respective deposit till its actual realization.
5. The present complaint was filed on 21.10.2024 and registered as complaint no. 5138 of 2024. Notice sent to the respondent through e-mail (crm@mahiragroup.com) was duly served on 23.10.2024. Notice sent to the respondent through post (EH09225339IN) was also duly served. As per the

registry, the complainants sent a copy of the complaint along with annexures via speed post as well as email. The tracking report for the same was submitted by the complainant along with the complaint. Despite proper service of notice, neither the respondent put in appearance before the Authority nor any written reply filed till date. In view of the above, the matter was proceeded ex-party against respondent vide order dated 23.12.2025 and the matter is being decided based on the facts and documents submitted with the complaint, which remain undisputed.

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 on the basis of 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) 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.

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."** (Supra) and 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 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 case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to refund the entire amount paid by the complainants along with prescribed interest from the date of respective deposit till its actual realization.

13. The factual matrix of case reveals that the complainants had booked a residential unit in the Affordable Group Housing project of the respondent named "Mahira Homes-68" at Sector-68, Gurugram and was allotted a unit bearing no. G-1004, 10th floor, tower G, having carpet area of 644.39 sq. ft. vide allotment letter dated 07.05.2018. A buyer's agreement dated 26.07.2018 was executed between the parties. The complainant has paid an amount of Rs.28,37,754/- against the total sale consideration of Rs.28,37,754/-.
14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest as per Section 18(1) of the Act and the same is reproduced below for ready reference: -

"Section 18: - Return of amount and compensation

18(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.

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every

month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. As per clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

"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 the policy."

16. **Due date of handing over of possession:** 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 building plan approval and environment clearance in respect of the said project on 23.02.2018 and 05.06.2018 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 05.12.2022.
17. The Authority considering the above facts opines that the due date of possession (05.12.2022) has lapsed much before the time of filing of the present complaint on 21.10.2024. Further, Section 18 of the Act is invoked if the promoter is unable to handover possession of the unit due to discontinuance of business as developer on account of suspension or revocation of registration under this Act or any other reason then the allottee shall be entitled to refund of the entire amount paid to the respondent along with prescribed rate of interest.

18. 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 fulfilment 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. 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.
19. 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 and also due to the promoter's serious violations, there seems no possibility of completing the said project in near future. Thus, the Authority is of the view that the complainants are entitled to his 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.
20. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund of the paid-up amount as per provisions of the Act and rules framed thereunder. Proviso to Section 18 of the Act provides that where an allottee(s) intends to withdraw from the project, the promoter shall be liable 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 and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 is reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

21. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
23. Accordingly, the respondent is obligated to refund the paid-up amount of Rs.28,37,754/- received by it along with interest at the rate 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:

24. 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.28,37,754/- to the complainant along with interest at the rate of 10.80% 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 respondent is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
25. The complaint and application, if any, stands disposed of.
26. File be consigned to the registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025



(Arun Kumar)
Chairman

HARERA
GURUGRAM