

**BEFORE THE HARYANA REALESTATE REGULATORY
AUTHORITY, GURUGRAM**

Date of filing of complaint: 25.07.2024
Date of decision : 16.12.2025

Sumitra

R/o:- H.No.- 199, Near Govt. High School, Chandu,
Budhera, Gurugram, Haryana- 122505

Complainant

Versus

M/s Czar Buildwell Limited

Regd. Office at: 302A, Global Foyer Mall, Golf Course
Road, Sector- 43, Gurugram, HR- 122009

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

Chairman
Member

APPEARANCE:

Shri Ankit Kumar (Advocate)
None

Complainant
Respondent

EX- PARTE ORDER

1. This 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 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. N.	Particulars	Details
1.	Name of the project	“Mahira Homes-95”
2.	Project location	Village Dhorka, Sector-95, Gurugram.
3.	Nature of project	Affordable group housing
4.	Area of project	10.44375 acres
5.	HRERA registered/ not registered	Registration revoked
6.	DTCP License	License no. 24 of 2020
7.	Acknowledgement receipt dated	14.10.2020 (Page 13 of complaint)
8.	Flat Buyer's Agreement	25.03.2021 (Page 19 of complaint)
9.	Unit no.	T1-905, 9 th Floor, Tower 3 (Page 21 of complaint)
10.	Possession clause	4. POSSESSION <i>xxxx....., the Developer proposes to offer possession of the Said Apartment to Stamp Duty and registration charges, the Developer proposes to offer possession of the said Apartment to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance...xxx</i>
11.	Date of Building plan approval	25.10.2021 (As per the information provided by the respondent on website at the time of registration of project)

12.	Date of environmental clearance	27.04.2022 (As per the website of SEIAA, Haryana)
13.	Due date of possession	27.04.2026 (Calculated 4 years from date of environment clearance being later)
14.	Payment Plan	Time Linked
15.	Sale consideration	Rs.26,23,112/- (Page 25 of complaint)
16.	Amount paid by the complainant	Rs. 13,24,670/- (As per additional document dated 04.12.2025 filed by the complainant by way of filing bank statement)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

i. The respondent gave advertisement in various leading newspapers about their forthcoming project named "Mahira Homes- 95", Village Dhorkha, The- Harsaru, Sector- 95, 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 a unit measuring 643.278 sq. ft. carpet area in aforesaid project of the respondent for total sale consideration is Rs.26,49,344/-. And booked 3BHK flat bearing no T1-905 on dated 14.10.2020 with booking amount one lakh thirty-

one thousand. The complainant made payment of Rs.13,24,670/- to the respondent vide different cheques and other mode, the respondent duly accepted the payments.

- ii. That respondent agreed to allot unit admeasuring 643.278 sq. ft. carpet area in project named "Mahira Homes- 95", Village Dhorkha, The- Harsaru, Sector- 95, Gurgaon, to the Complainant. As per buyer's agreement dated 10.06.2021 the respondent had allotted an apartment/flat bearing No T1-905, 9th Floor in Tower 1, 743.278 sq. ft. to the complainant.
- iii. As per para no. 4 (a) of the buyer agreement dated 10.06.2021, the respondent had agreed to deliver the possession of an apartment/flat within four years from the date of start of construction.
- iv. The complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false information that the work is going in full mode and accordingly asked for the payments which the complainant gave more than 50% amount of said flat 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. The respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without completing the work and not handing over the possession on time. The respondent mala-fide and

dishonest motives and intention cheated and defrauded the complainant.

v. The respondent has not even started the construction of the tower in time which complainant is allotted his unit by the respondent. That by seeing this conduct of the respondent, complainant asked for the refund of the total amount paid by him to the respondent but respondent only made acknowledgment slip dated 27.05.2022 to the complainant after deduction of their amount. In lieu of the above no deductions would be charged from complainant on account of cancellation charge as complainant had no fault and has followed the terms and conditions of buyer's agreement.

vi. That despite receiving of more than 50% approximately payments on time for all the demands raised by the respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to return the amount to the complainant within stipulated period i.e. 120 days which was mentioned in para 4 (F) of the buyer's agreement as follows:

"The Allottee shall have the right to cancel/withdraw his allotment in the Project as provided in the Act. Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the developer, the developer herein is entitled to recover the charges towards cancellation, taxes due, interest on delayed payments and other deductions as per Affordable Housing Policy 2013. The rate of interest payable by the allottee to the promote developer shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter developer to the allottee within one hundred twenty days of such cancellation".

vii. It could be seen that the construction of the block in which the Complainant unit was booked with a promise by the respondent to deliver the unit on time but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

viii. 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 respondent had started construction timely. That as oral agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.150/- per sq. ft. per month of the total area of the unit. It is however, pertinent to mention here that a compensation at such a nominal rate of Rs.150/- 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 on time and due to which arises mental agony to complainant. The respondent cannot escape the liability merely by mentioning a compensation.

ix. 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 money return till the date to the complainant and the cancellation charges arise due to his deficiency in services.

x. 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 unit in question along with prescribed interest on the amount deposited by the complainant but respondent has flatly refused to do so. Also, requested the respondent to return their amount timely, but they assured the complainant to do so. Still, complainant is waiting and mailed so many times in regarding of the above. 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 amount received by the promoters in respect of the allotted unit with interest at the prescribed rate.
 - ii. Direct the respondent to pay the litigation cost of Rs. 1,00,000/- as arises due to deficiency in their services/ delay in payment to the complainant, after many requests were made.
 - iii. Direct the respondent to pay a penalty of Rs.1,00,000/- on account of harassment, mental agony suffered by the complainant.
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.

6. The Authority issued a notice dated 26.07.2024 and 30.07.2024 to the respondent by speed post and also on the given email address at 5920gankit@gmail.com, and kumarprince793@gmail.com for filing of reply and putting up appearance on the date fixed for hearing. The delivery reports have been placed in the file. Despite given ample opportunities vide hearings dated 14.11.2024, 20.02.2025 and 01.05.2025 the counsel for the respondent neither put in appearance nor did not file any reply to the complaint within the stipulated period. Accordingly, the Authority was left with no other option but to struck off the defence of the respondent on 07.08.2025 and proceed ex-parte against the respondent and decide the complaint on the basis of documents and pleadings filed by the complainant which are not disputed.

D. Jurisdiction of the authority

7. The Authority has complete territorial and 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, 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.

D.II Subject-matter jurisdiction

9. 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) 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 complainants 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. 2021-2022 (1) RCR (Civil), 357*** 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.

G.I Direct the respondent to refund the amount received by the promoters in respect of the allotted unit with interest at the prescribed rate.

13. The complainant booked a unit in the project of respondent “Mahira Homes”, in Sector 95, Gurugram in 2020. A flat buyer's agreement was executed between the parties on 25.03.2021 and the complainant started paying the amount due against the sale consideration of Rs.26,23,112/- and paid a total sum of Rs.13,24,670/-.

14. The respondent was obligated to handover the possession of unit on or before 27.04.2026. The due date of possession is to be calculated 48 months from the date of environment clearance i.e., 24.04.2022 which comes out to be 27.04.2026 as per the possession clause of another project of Affordable Group Housing Policy, 2013.
15. The complainant intends to withdraw from the project and is seeking return of the amount paid in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Section. 18(1) of the Act 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."

(Emphasis supplied)

16. Furthermore, it is 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 frozen by the Authority due to non-compliance of the provisions of the Act, 2016. On 06.11.2023 the Authority initiated suo-motu 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 frozen therefore, this amounts to discontinuation of business of the respondent.

17. 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 complainant shall be entitled for entire refund of the amount paid to the respondent along with the prescribed rate of interest.
18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund of the paid -up at prescribed rate of

interest as provided under rule 15 of the rules. Rule 15 has been 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.

19. The legislature in its wisdom in the subordinate legislation under the provision of 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.
20. 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., 16.12.2025 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (supra)** it was 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".

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the complainant wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest.
23. 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 complainant, under Section 18(1)(b) read with Section 19(4) of the Act of 2016 is entitled to claim the refund of paid-up amount of Rs.13,24,670/- received by the respondent against the unit 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.

G. II Direct the respondent to pay the litigation cost of Rs. 1,00,000/- as arises due to deficiency in their services/ delay in payment to the complainant, after many requests were made.

G.III Direct the respondent to pay a penalty of Rs. 1,00,000/- on account of harassment, mental agony suffered by the complainant.

24. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

25. The complainant is seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

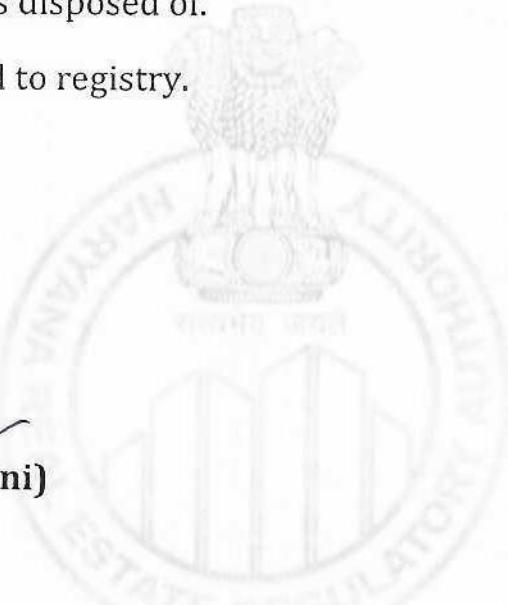
H. Directions of the Authority

26. 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 is directed to refund the amount paid-up amount of Rs.13,24,670/- received by it from 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 date of refund of the deposited 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.
27. Complaint stands disposed of.
28. File be consigned to registry.




(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.12.2025