

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

Complaint no. : 1989 of 2025
Date of complaint : 08.05.2025
Date of order : 30.01.2026

Priyanka Banerjee,
R/o: - H. No. 134, Old Subhash Colony, Dimna
Road, Mango, Jamshedpur, Jharkhand-831012.

Complainant

Versus

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

2. PNB Housing Finance Limited
Having Regd. Office at: - 9th Floor, Antriksh
Bhawan, 22, K G Marg, New Delhi-110001.

Respondents

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Abhinav Arora (Advocate)
None
Krishna Saroff (Advocate)

Complainant
Respondent No.1
Respondent No.2

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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 103, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
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	Revoked vide order dated 11.03.2024
6.	Unit no.	907, 9 th Floor, Tower-H (As per page no. 84 of the complaint)
7.	Unit area admeasuring	586 sq. ft. (Carpet area) (page 27 of the complaint)
8.	Date of allotment	01.07.2019 (page 27 of complaint)
9.	Date of building plan approval	29.03.2019 (As per project details)
10.	Environmental clearance dated	29.01.2020 (As per project details)
11.	Execution of BBA	26.09.2019 (page 81 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</i>

		<i>period from the date of commencement of project.</i>
13.	Due date of possession	29.07.2024 [Calculated as 4 years from the date of grant of environmental clearance i.e., 29.01.2020 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
14.	Tri-partite agreement	07.08.2019 (page 29 of complaint)
15.	Total sale consideration	Rs.24,16,790/- (as per SOA dated 15.12.2021 on page 143 of complaint)
16.	Amount paid by the complainant	Rs.21,14,546/- (as per SOA dated 15.12.2021 on page 143 of complaint)
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. That the present complaint is being filed under Section 31 of the Act, 2016 for the violation of provisions of the said Act and the Rules framed thereunder by the respondent No.1 in relation to the project titled "Mahira Homes 103" situated at Sector 103, District Gurugram, Haryana.
 - II. That the respondent No.1 announced and marketed the booking of the said project earlier in the year 2019, and based on the representations and assurances made by the respondent No.1, the complainant booked a 2 BHK Unit Type-B admeasuring a carpet area of 586 sq. ft., bearing unit No. 907 in Tower H of the said project.
 - III. That the complainant paid a booking amount of ₹1,15,000/- through a cheque dated 10.04.2019. Her booking was duly acknowledged and

confirmed by respondent No. 1 via acknowledgment letter dated 13.04.2019 and subsequently through an allotment letter dated 01.07.2019.

- IV. That due to the limited financial means, the complainant sought and obtained a housing loan from Punjab National Bank Housing Finance Limited under the affordable housing scheme for this purpose. Therefore, a tripartite agreement dated 07.08.2019 was executed among the complainant, the respondent No.1, and the respondent No.2. Subsequently, a builder buyer agreement was executed between the complainant and the respondent No.1 on 26.09.2019, wherein the respondent No.1 committed to hand over possession within four years, as per Clause 4A of the BBA.
- V. That the Complainant, by the time of allotment, had already paid a total of ₹6,03,336/-, which constituted about 24.95% of the total sales consideration, comprising ₹1,15,000/- as the booking amount and ₹4,88,336/- at the time of allotment, in accordance with the payment plan.
- VI. That the remaining payments were to be made as per the payment schedule agreed upon, which stipulated bi-annual installments of ₹3,02,242/- every six months from the date of allotment.
- VII. That the respondent No.2 disbursed the required amounts to the respondent No.1 as per the demands raised from time to time, and the complainant regularly paid the EMIs to the respondent No.2.
- VIII. That during the period between 16.12.2021 and 01.03.2023, the complainant received repeated demands from respondent No. 1 pertaining to outstanding dues. Acting under legitimate apprehension of forfeiture of the allotted unit, the complainant promptly approached respondent No. 2, urging immediate release of the pending payment.

However, the respondent No. 2 informed the complainant via email/letter dated 20.06.2022 that the disbursement would only be made upon receipt of reports concerning the stage of construction, and subject to compliance with the guidelines set forth by the RBI and the respondent No. 2 further indicates that discussions were ongoing with respondent No.1. It is pertinent to note that, all payments were made timely and without any default by the complainant, until the respondent No.2 refused to disburse the final installment.

- IX. That on 02.03.2023, the complainant was abruptly informed by respondent No. 2, through a unilateral and arbitrary communication, that the disbursement of the final installment would not be possible, as the construction of the project had only reached 3% as of that date, according to the respondent No. 2's recent inspections and records. The respondent No.2 cited the RBI guidelines as per its circular No. DBR.No.DIR.BC.13./08.12.001/2015-16 dated 01.07.2015, which mandates that loan disbursements be closely linked with the progress of construction.
- X. That the complainant, who had always trusted respondent No.1's promises and representations regarding the progress of construction, was shocked and dismayed when she learnt about no construction at the site. Upon visiting the construction site, the complainant found no visible signs of construction activity. Despite multiple attempts to contact respondent No.1 through emails, messages, phone calls and visits to their office, the respondent No.1 failed to provide any satisfactory response regarding the status of the project.
- XI. That on 20.09.2024, respondent No. 2 raised a frivolous demand of Rs.25,131 from the complainant in respect of the outstanding EMIs installments. In response, the complainant by way of a representation

dated 24.09.2024, requested respondent No.2 to quash the demand for EMIs payments and refrain from taking any coercive action against her as the respondent No. 1 had breached the terms of the BBA and tripartite agreement and failed to undertake due care during the disbursement of the loan amount, which ought to have been done properly by the respondent No. 2.

- XII. That despite the complainant's request and the challenging circumstances she was enduring, including the shattering of her dream of homeownership, respondent No. 2 has persisted in making unlawful demands. Subsequently, respondent No. 2 sent a letter dated 04.12.2024 via mail to raise an arbitrary demand of Rs.53,929 and thereafter, issued a legal notice dated 27.12.2024 u/s 25 and 27 of the Payments and Settlement System Act, 2007, demanding payment of the EMI installments which is arbitrary, unlawful, and contrary to established legal principles as well as recent judicial precedents.
- XIII. That on 14.01.2025, the complainant sent a formal response to the legal notice dated 27.12.2024, requesting respondent No. 2 to suspend the EMI obligations until the issues concerning the project are duly resolved. The complainant further urged respondent No. 2 to abstain from initiating any adverse or coercive actions against her in light of the prevailing circumstances.
- XIV. That despite the complainant's formal response and her earnest appeal to suspend EMI obligations, respondent No. 2 issued yet another legal notice dated 15.01.2025 under Section 13(2) of the SARFAESI Act, 2002, initiating coercive recovery proceedings. The complainant, aggrieved by this arbitrary and unjustified action, submitted a detailed written reply dated 07.02.2025, vehemently contesting the legality, validity, and maintainability of the said notice.

- XV. That additionally, the respondent No. 2, with malafide intent to harass the complainant, deliberately invoked the pre-litigation Lok Adalat process under Section 20(2) of the Legal Services Authorities Act, 1987, despite having no genuine intention to settle the dispute. The complainant, acting in utmost good faith, diligently complied with the notice Ref. No. DLS.V/S.W/2025/184 dated 19.02.2025 and appeared before the Lok Adalat of South west District Legal Services Authority on 08-Mar-2025. However, the respondent's representative adopted a wholly non-cooperative stance and categorically refused to engage in any settlement discussions or consider reasonable resolution options.
- XVI. That further demonstrating this pattern of oppressive conduct, in blatant disregard of the complainant's formal response dated 07.02.2025 and her earnest request to suspend EMI obligations, respondent No. 2 issued a reply letter dated 12.03.2025, purporting to convey the reasons for the non-acceptance of the complainant's detailed representation and objections dated 07.02.2025.
- XVII. That the complainant, who has been diligent in paying her EMIs to the respondent No.2, has been left in a state of uncertainty and distress, having invested a total of Rs.21,14,546/. The respondent No.1's failure to provide any updates on the project's progress or to respond to the complainant's inquiries has resulted in a significant breach of trust.
- XVIII. That the respondent No.1's actions are also in violation of the obligations cast upon them under the Act and the Rules, particularly with regard to ensuring the timely completion of the project and delivering possession to the allottees as per the agreed timelines.
- C. Relief sought by the complainant:**
4. The counsel for the complainant vide proceedings dated 30.01.2026 has clarified that the complainant is seeking refund of the amount paid along



with interest as per the provisions of the Act, 2016. Thus, the complainant is now seeking the following relief(s).

- i. Direct the respondent to refund the entire paid-up amount along with interest.
 - ii. Restrain respondent no.2 from raising demand towards EMI payment and refund of EMI's paid.
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. Despite due service of notice, no reply has been received from respondent no.1 with regard to the present complaint and also none has put in appearance on its behalf before the Authority. In view of the above, vide proceedings dated 30.01.2026, the respondent no.1 was proceeded ex-parte.
7. The respondent no.2 vide its reply dated 10.09.2025 has contested the complaint on the following grounds:
 - i. That the role of the answering respondent is solely confined to providing financial assistance in furtherance of the loan agreement to purchase the respective unit/apartment and the answering respondent has fulfilled all its obligations under the loan agreement and tri partite agreement.
 - ii. That Section 31 of the Act mandates filing of complaint for any violation or contravention of the provision of the Act or rules and regulations made there under only against any promoter, allottee or real estate agent and the answering respondent does not fall under any of those categories and consequently is incapable of committing any violation or contravention of the provision of the Act as the



provision contains duties and obligations only of the three entities mentioned above viz promoters, allottees, real estate agents. Furthermore, Section 36 of the Act only empowers the Authority to issue interim order only against promoters, real estate agents and allottees.

- iii. That in or about 08/07/2019, the complainant had approached the answering respondent and represented that she had booked a 2 BHK Unit (Type B) bearing unit no. 907, Tower-H, "MAHIRA HOMES 103, located at Gurgaon, Haryana- 122006 and the said unit had also been allotted to her by the respondent no 1. It is pertinent to mention here that the answering respondent is a financial institution and had advanced the loan facility to the complainant for the purchase of the said unit after being approached by the complainant for the aforementioned intention and on the representation made by the complainant that the builder/promoter is of his choice and she has satisfied herself with regard to integrity and capacity of the builder about the construction quality and the builder's ability and efficiency in timely completion of the project.
- iv. That based on the loan application of the complainant a loan amount of Rs.22,84,905/- was sanctioned by the answering respondent in her favour.
- v. That since the flat was under construction, a tri-partite agreement was executed amongst the complainant, the answering respondent and the respondent no. 1 for the purchase and financing of the said flat. That at the time of executing the said tri -partite agreement, the complainant represented that her obligation to repay the loan shall be distinct and independent obligation more particularly independent of any issues/concerned/dispute of whatsoever nature

- between the complainant and the respondent no 1. By virtue of clause 4 of the tr-partite agreement, the answering respondent is entitled to recover and the complainant is duly bound to pay the EMIs regularly irrespective of the stage of construction of the said flat.
- vi. That out of the said sanctioned amount and upon instructions of the complainant by way of submission of the disbursement request form a disbursal of Rs.22,84,905/- vide loan account no. HOU/GUR/0719/720797 was made to the builder and insurance company.
 - vii. That the disbursement letter was to be read in conjunction with the sanction letter and the general terms and condition for the purpose of interpretation of the terms.
 - viii. That the complainant promised to pay the answering respondent the loan amount with additional interest, costs, expenses, and charges due and payable via a demand promissory note dated 19/08/2019 and further issued a letter of continuity to the answering respondent and executed a Power of Attorney in favour of the answering respondent.
 - ix. That from the perusal of the actual factual scenario and in the facts and circumstances of the instant complaint, it is evident that the complainant has wilfully agreed to the terms and conditions of the agreements and she cannot make the answering respondent a party to the present complaint as there is no cause of action against the answering respondent.
8. 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 parties.

D. Jurisdiction of the authority

9. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

10. 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

11. 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.

12. 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.

F. Findings on the relief sought by the complainant.

- F. I Direct the respondent to refund the entire paid-up amount along with interest.**

F.II Restrain respondent no.2 from raising demand towards EMI payment and refund of EMI's paid

13. The complainant was allotted a residential apartment bearing no. 907, Tower-H, 9th Floor having carpet area of 586 sq.ft. in the Affordable Group Housing project of the respondent no.1 named "Mahira Homes-103" at Sector-103, Gurugram vide flat buyer's agreement dated 26.09.2019 for a total sale consideration of Rs.24,16,790/- against which the complainant has made a payment of Rs.21,14,546/- as and when demanded by the respondent no.1. 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 no.1 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 no.1 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 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/promoter 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/promoter.

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 then the complainant shall be entitled for refund of the entire amount paid to the respondent/promoter 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*

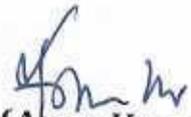
may be prescribed in this behalf including compensation in the manner as provided under this Act:....."

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 complainant is entitled to her 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 no.1 to refund the paid-up amount of Rs.21,14,546/- received by it 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.
17. Out of total amount so assessed, the amount paid by the respondent no.2 i.e. bank/payee, be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.

G. Directions of the authority

18. 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.21,14,546/- received by it 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. Out of total amount so assessed, the amount paid by the respondent no.2 i.e. bank/payee, be refunded in the account of bank and the balance amount along with interest shall be refunded to the complainant.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
19. Complaint stands disposed of.
 20. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.01.2026