

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

Complaint no. : 437 of 2022  
Complaint filed on : 23.02.2022  
Date of first hearing: 19.05.2022  
Date of decision : 16.11.2023

Dilvinder Singh R/o- 2749/13, Ranjit Nagar, New Delhi 110008	<b>Complainant</b>
Versus	
Sunrays Heights Private Limited <b>Registered Office:</b> 211, 2 <sup>nd</sup> Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi 110 001. <b>Corporate Office:</b> 41, District Centre, Sector-56, Gurgaon 122001.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person with Sh. A.S. Bedi Advocate	Complainant
Ms. Tanya Advocate	Respondent

**ORDER**

- 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 to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project related details**

2. The particulars of the project, the details of 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 of the project	"Sixty-Three Golf Drive", Sector 63-A, Gurugram"
2.	Project area	5.9 acres
3.	Nature of the project	Affordable Housing Policy
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 Valid upto 07.08.2019
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA registration details	Registered 249 of 2017 dated 26.09.2017
7.	Date of allotment	11.01.2016 (page 20 of complaint)
8.	Flat buyer's agreement	Executed but date is not mentioned
9.	Unit no.	D-16 (Page 20 of complaint)
10.	Unit area admeasuring	Carpet Area- 361.89 sq.ft Balcony Area- 69.84 sq.ft.
11.	Possession clause	<b>4- Possession</b>  <i>The developer shall endeavor to handover possession of the said flat within a period of 4 years i.e. 48 months from the date of commencement of project, subject to force majeure &amp; timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement</i>

		<p><b>Note: As per affordable housing policy 2013</b></p> <p><b>1(iv)</b> 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 "<b>date of commencement of project</b>" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project</p>
12	Date of building plan approval	<b>10.03.2015</b>
13	Date of environment clearance	<b>29.09.2016 (taken from another file of the same project)</b>
14	Due date of possession	<p><b>29.03.2021</b></p> <p>(Calculated from date of environment clearances i.e., 29.09.2016 being later, which comes out to be 29.09.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic.</p>
15	Basic sale consideration	<p>Rs. 14,82,480/-</p> <p>(As per on page 20 of complaint)</p>
16	Amount paid by the complainant	<p>Rs. 13,50,064/-</p> <p>(As per on page 06 of complaint)</p>
17	Occupation certificate	Not obtained
18	Offer of possession	Not offered

## B. Facts of the complaint

3. The complainant has made the following submissions: -

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- I. That the complainant made an application in the standard format provided by the respondent dated 28.05.2015 to book residential apartment. The respondent vide letter dated 11.01.2016 provisionally allotted a residential flat bearing no. D16 having carpet area admeasuring 361.89 square feet and balcony area of 69.84 square feet together with a free two-wheeler parking for an amount of Rs. 14,82,480/- excluding taxes and charges as applicable in 63 Golf Drive to be developed at Sector 63A, Gurgaon under Affordable Housing Policy, 2013 of the State government of Haryana. The respondent demanded a sum of Rs. 326,738/- to be paid on or before 26.01.2016. In the said provisional letter while demanding the amount of Rs. 326,738/- to be paid by 26.01.2016, assured to issue confirmed allotment of the flat upon realisation of the sum demanded, and further assured to execute a builder buyer agreement. The respondent received the sum of Rs. 3,26,738/- from the complainant on 25.01.2016.
- II. That the respondent claimed to have obtained the building plan approval from the DTCP on 10.03.2015. The date of commencement of project was to be the date of obtainment of all the government sanctions and permissions including environment clearance. The date of commencement of the project had not been intimated to the complainant. It is, therefore, pertinent to mention that the date of commencement of the project is to be taken as 10.03.2015 when the provisional allotment was made by the respondent.
- III. That the respondent undertook to handover possession of the flat to the complainant within 48 months from the date of commencement of the project subject to force majeure, and timely payment by the allottee. The respondent was liable to handover possession no later than 10.03.2019.
- IV. That the complainant undertook to make full payment towards the total sale consideration upon demand by respondent within a period of 36 months from the date of allotment.

- V. That the respondent demanded a sum of Rs. 1,87,162/- vide their demand letter dated 18.10.2016 to be paid on or before 02.11.2016 and the same was paid by the complainant on 15.11.2016
- VI. That the complainant made regular and timely payment to the respondent, and had paid a total amount of Rs. 13,50,064/- till 11.03.2020 in full satisfaction of demand raised by the respondent.
- VII. That the respondent was issued the license no. 82 of 2014 dated 08.08.2014, and approval of building plans of Affordable Group Housing Colony under DTCP License No. under Memo No. ZP-1063/ AD(RA)/ 2015/ 3732 dated 10<sup>th</sup> March 2015 was obtained by the respondent.
- VIII. That the respondent has till date not completed construction of the flat allotted to the complainant. In spite of the complainant's regular enquiry regarding the status of construction and construction updates, the respondent has refused to commit a firm date of completion of the flat allotted to the complainant.
- IX. That because of the complete insensitivity on the part of the respondent, the complainant has suffered heavy financial loss and mental agony because of the elongated and continuing delay in getting possession of the flat allotted to the complainant.

**C. Relief sought by the complainant**

4. The complainant has sought following relief:
- Direct the respondent to delay possession charges along with interest and handover the possession of the unit complete in all aspects as per the brochure.
5. The respondent put in appearance through its counsel Ms. Srishti Girdhar on 19.05.2022 and sought adjournment for filing of reply the said request was allowed. On 09.09.2022 i.e., the next date of hearing, the counsel for the respondent again sought short adjournment for filing reply. The said request



was allowed with a specific direction to file the reply with a cost of Rs. 5,000/- within 2 weeks. On 12.01.2023 & 06.07.2023 none appeared on behalf of the respondent and despite directions written reply has not been filed till date. Thereafter, on 16.11.2023, the AR along with new counsel of the respondent appeared but despite various directions written reply has not been filed. Further, the counsel of the respondent submitted during the hearing that the occupation certificate of the unit has been applied but the same is not yet received and hence no offer of possession to the complainant-allottee has been made till date. The Authority vide orders dated 12.01.2023, 06.07.2023 & 16.11.2023, observed that the respondent has nothing to say in the present matter and accordingly, the Authority proceeded with the case without reply and defence of the respondent was struck off.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

#### **E. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

##### **E. I Territorial jurisdiction**

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.

##### **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)(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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings regarding relief sought by the complainant.**

**G.I Direct the respondent to pay delay possession charges along with interest & hand over the possession of the unit.**

9. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

**"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, —*

*.....*  
*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."*

10. Clause 4 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:



**4-Possession**

*The developer shall offer possession of the unit any time, within a period of 48 months from the date of execution of the agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 48 months as above in offering the possession of the unit."*

11. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
12. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of



both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.

**13. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges at the prescribed rate. However, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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]***

*(1) 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.*

14. 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.

15. 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., 16.11.2023 is

**8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

16. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
18. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4 of the buyer's agreement, the possession of the subject apartment was to be delivered within 4 years from the date of commencement of project (as per clause 1(iv) of Affordable Housing Policy, 2013, 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). In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is not given, so the date is taken from another file of the same project i.e., 29.09.2016. The date of environment clearance being later, the due date of handing over of possession is reckoned from the date of environment clearance. Therefore, the due date of handing over of possession comes out to be 29.09.2020. Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 29.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 29.03.2021. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

19. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 29.03.2021 till the actual handing over of possession or offer of possession + 2 months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**H. Directions of the authority:**

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to pay interest to the complainant/allottee on the paid-up amount at the prescribed rate of 10.75% p.a., for every month of delay from the due date of possession i.e., 29.03.2021 till the actual handing over of possession or offer of possession + 2 months whichever is earlier.
- II. The respondent is directed to handover the possession of the subject unit after obtaining occupation certificate from the competent authority and after payment of outstanding dues, if any.
- III. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- IV. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- VI. The respondent shall not charge anything from the complainant which is not the part of the agreement.

21. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 16.11.2023

V.I-3  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory  
Authority, Gurugram



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