

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

Complaint no. :	2814 of 2021
First date of hearing :	24.09.2021
Date of pronouncement :	30.11.2023

Sunita Malhotra R/o: H.No: 374, Sector 14, Sonipat.	Complainant
Versus	
M/s Sunrays Heights Pvt. Ltd. Office: 211, Ansal Bhawan, 16 KG Marg, New Delhi.	Respondent
CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rajan kumar Hans (Advocate)	Complainant
Sh. Srishti Girdhar (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 under the provisions 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

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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	"Sixty-Three Golf Drive", Sector 63-A, Gurgaon.
2.	Nature of the project	Affordable Housing Project
3.	Project area	5.9 acres
4.	DTCP license no.	82 of 2014 dated 08.08.2014 Valid upto 31.12.2023
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA Registered/ not registered	249 of 2017 dated 26.09.2017 valid upto 25.09.2022
7.	Allotment letter	22.06.2017 (As per page no. 19 of complaint)
8.	Date of builder buyer agreement	07.05.2016 (Page 20 of the complaint)
9.	Unit no.	C-76, Tower-C (Page 33 of complaint)
10.	Unit area admeasuring	Carpet Area- 604.83 sq.ft. Balcony Area- 95.10 sq.ft.
11.	Possession clause	<p>4- Possession</p> <p><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 & timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement. (Page 23 of the complaint)</i></p> <p>*Note: As per affordable housing policy 2013</p> <p>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of</p>

		<i>commencement of project" 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.</i>
13.	Date of building plan approvals	10.03.2015 (page 21 of complaint)
14.	Date of environment clearance	29.09.2016 (taken from another file of the same project)
15.	Due date of possession	29.03.2021 (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.)
16.	Total sale consideration	Rs. 24,66,877/- (page 33 of complaint)
17.	Total amount paid by the complainant.	Rs. 22,46,310/- (page 15 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That in 2015, the complainant got information about an advertisement in a local newspaper about affordable housing project "Sixty Three Golf Drive" at Sector 63 A, Gurugram, Haryana. The marketing staff of the respondent showed a rosy picture of the project and allure with proposed specifications and invited for site visit. The complainant visited the project site and met with local staff of respondent who gave an application form and assured that possession would be delivered within 36 months as they were told that it is a govt. project having fixed

payment instalment in every 6 months and on the last instalment, the possession would be deliver.

- II. That the complainant applied for a 2BHK residential unit in upcoming project of respondent namely "Sixty-Three Gold Drive", Sector 63 A, Gurugram, Haryana for which the complainant had paid an amount of Rs. 1,19,000/- towards booking the unit vide cheque no. 249326 dated 28.03.2015, along with application form, respondent knowledges the payment and issued payment receipt on date 28.03.2015. The complainant got the unit in the draw of lots.
- III. That on 07.05.2016, the respondent issued an provisional allotment letter cum demand letter against the allotted unit C-76, admeasuring 604.83 sq.ft. and 95.10 sq.ft. balcony. The unit was purchased under the time linked payment plan as per the mandate under the affordable housing policy 2013 for sale consideration of Rs. 24,66,870/-. On 22.06.2017, the respondent issued an allotment letter against the allotted unit no. C-76.
- IV. That on 07.05.2016, a pre-printed one sided, arbitrary and unilateral buyer's agreement for allotted unit was executed between the parties. As per clause 4.1, the respondent had to complete the construction of flat and handover the possession within 4 years from the date of commencement of project.
- V. That till date the respondent has raised a demand of Rs. 22,46,310/- and the same was paid by the complainant i.e., 100% of demanded money, but when complainant observed that there is very slow progress in the construction of subject flat for a long times, he raised their grievance to the respondent.

- VI. That the complainant has always paid the instalment on time and the last instalment was paid on 10.12.2019 and it is expected to take around 1-2 years more for the completion of the project.
- VII. That it was promised by the respondent at the time of receiving payment for the unit that the possession of fully constructed unit as shown in Newspaper at the time of sale, would be handed over to the complainant on and after the payment of last and final instalment, these instalment becomes accrue on every 6 months after the commencement of construction work, and the respondent was under obligated to deliver the project complete in all respect as and when the respondent takes the last instalment or by maximum till 29.09.2020.
- VIII. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent and as such, they are liable to be punished and compensate the complainant
- IX. That due to above acts of the respondent and of the terms and conditions of the buyer's agreement and of Affordable Housing Policy 2013, the complainant has been unnecessarily liable to provide interest on capital to the complainant on account of the aforesaid act of unfair trade practice.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to handover the possession of the property/floor to the complainant, in a time bound manner.
- II. Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of Act, 2016 and Rules, 2017.

5. Though, the respondent put in appearance through its counsel and sought adjournment for filing of reply. The said request was allowed with a cost of Rs. 5,000/-. On 19.05.2022 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 failing which the reply would be accepted only with additional cost of Rs. 5,000/- to be paid to the complainant. On 09.09.2022 i.e., the next date of hearing, the counsel for the respondent again requested for short adjournment for filing reply. The said request was allowed with the specific direction to file reply within two weeks i.e., by 23.09.2022 in the registry with an advance copy to the complainant subject to payment of cost of Rs. 20,000/- for not complying with the orders of the Authority. Last opportunity is being granted. In case, reply is not filed even at this stage within time allowed, the defense of the respondent may be struck off.
6. On 09.12.2022, the counsel for the respondent handed over the copy of reply to the counsel for the complainant during proceedings and states that the same is being submitted in the registry today itself and the cost of 20,000/- plus Rs. 5,000/- would be paid to the complainant before the next date of hearing. The counsel for the respondent was directed to file reply in the registry. On 04.05.2023 i.e., the next date of hearing, the proxy counsel for the respondent requests for a short adjournment as the main counsel is not available today as her father was admitted in ICU. However, in view of medical urgency in the family of arguing counsel, the request for short adjournment was allowed. On 11.05.2023, the counsel for the respondent states that the settlement talks are in progress and request for an adjournment for exploring the amicable settlement. The request is allowed,

if settlement is not arrived at between the parties, the respondent shall file reply within 15 days after supplying a copy of the same to the complainant. On 24.08.2023, i.e., the next date of hearing, the AR of the company requests for a short adjournment as the main counsel is not available today.

7. It is noted that already a number of adjournments have been sought by the respondent on one or another pretext. During the course of proceedings on 09.12.2022, the counsel for the respondent has assured to file the reply in the registry today itself but despite opportunity on 04.05.2023 and again on 11.05.2023, neither reply has been filed nor the cost has been paid to the complainant despite lapse of about 2 years' time since filing of the complaint and hence the respondent does not seek to be interested in either filing the reply and address the argument. Hence, in view of the order dated 24.08.2023, the defence of the respondent was struck off for not filing of reply.
8. 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

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

E.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.

E. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent to handover the possession of the property/floor to the complainant, in a time bound manner.**
- F.II Direct the respondent to pay interest @18% p.a. as payments, towards delay in handing over the property in question as per provisions of the Act, 2016 Rules 2017.**

A

13. 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."*

14. 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 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 & timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement. (Page 23 of the complaint).

15. 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.



16. 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 residential, 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/allottee in case of delay in possession of the unit.
17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the 18% 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.

18. 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.
19. 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., 30.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
20. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(za) 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;"*

21. 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 the complainant in case of delayed possession charges. Further no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid-19 period from 01.03.2020 to 01.09.2020.

22. 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 unit 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.

23. 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. Further, occupation certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. 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 after obtaining OC whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G. 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 is directed to pay interest to the complainant against 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



after obtaining OC whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
 - iii. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per section 2(z a) 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.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement.
 - v. 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 10th of the subsequent month as per rule 16(2) of the rules.
25. Complaint stands disposed of.
26. File be consigned to registry.

V.1-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.11.2023