

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

Date of order: 18.04.2024

NAME OF THE BUILDER		M/s Sunrays Heights Private limited,	
PROJECT NAME		63 GOLF DRIVE", Sector-63A, Gurugram	
S. No.	Case No.	Case title	Appearance
1.	CR/4817/2022	Kanika Gupta Vs. M/s Sunrays Heights Private Limited	Complainant in person Shri Gagan Sharma (Advocate for Respondent)
2.	CR/2417/2022	Chitrakshi Nayyer and Rajeev Nayyer Vs. M/s Sunrays Heights Private Limited	Shri Vijay Pratap Singh (Advocate for complainants) Shri Gagan Sharma (Advocate for Respondent)

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

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namely, 63 GOLF DRIVE”, Sector-63A, Gurugram being developed by the same respondent/promoter i.e., M/s Sunrays Heights Private Limited. The terms and conditions of the buyer’s agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	63 GOLF DRIVE Sector-63A, Gurugram
Nature of Project	Affordable group housing
DTCP License No. and validity	82 of 2014 dated 08.08.2014 Valid up to 31.12.2023
HRERA Registered	Registered Vide 249 of 2017 dated 26.09.2017 Valid up to 25.09.2022
Possession Clause	4.1 <i>The Developer shall endeavour to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i> <i>*Note: As per affordable housing policy 2013 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 commencement of project" for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.</i>
Building Plan	10.03.2015
Environmental Clearance	16.09.2016

Due date of possession	16.03.2021 (Calculated from the date of environment clearance being later including grace period of 6 months in lieu of Covid-19) (Note: inadvertently mentioned due date 16.09.2021 vide proceedings dated 18.04.2024).
Occupation certificate	Not obtained

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Consideration / Sale Total Amount paid by the complainant	Offer of possession
1.	CR/4817/2022 Kanika Gupta Vs. M/s Sunrays Heights Private Limited DOF:06.07.2022	E118, 11th floor, Tower E Carpet area-605.10 sq. ft.	18.09.2017	TS- Rs.24,67,870/- (page 44 of complaint) AP- Rs.22,55,588/- (page 59B of complaint)	Not offered
2.	CR/2417/2022 Chitrakshi Nayyar Vs. M/s Sunrays Heights Private Limited DOF: 01.06.2022	F112, Tower F Carpet area-613.31 sq. ft.	06.02.2016	TS- Rs25,00,790/- (page 73 of complaint) AP- Rs. 22,76,731/- (as per the payment receipts submitted by complainant on 03.04.2024)	Not offered

The complainants in the above complaints have sought the following reliefs:

1. Direct the respondent to pay delayed possession charges/interest till the delivery of possession.
2. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after Getting Occupancy Certificate.
3. Direct the builder to pay input tax credit on the GST amount after calculation, given GST paid @8% to the complainant as per the HRERA rules

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s
CD	Conveyance deed

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed

between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges and maintenance charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4817/2022 Kanika Gupta Vs. M/s Sunrays Heights Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details.

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/4817/2022 Kanika Gupta Vs. M/s Sunrays Heights Private Limited.

S. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable group housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	E118, 11 th floor, Tower E (page 44 of complaint)

6.	Unit admeasuring	605.10 (carpet area) (page 44 of complaint)
7.	Allotment letter	11.01.2016 (page 28 of complaint)
8.	Date of execution of Buyers agreement	18.09.2017 (page 30 of complaint)
9.	Possession clause	<p>4.1 <i>The Developer shall endeavor to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i> (page 34 of complaint)</p> <p><i>*Note: As per affordable housing policy 2013 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 commencement of project" for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.</i></p>
10.	Date of building plan	10.03.2015 (taken from another file CR/2814/2021 decided on 30.11.2023 of same project)
11.	Date of environment clearance	16.09.2016 (taken from another file CR/5238/2022 of same project)
12.	Due date of possession	16.03.2021 (16.09.2020 plus six months in lieu of covid-19) (calculated from the date of environment clearance) (Note: inadvertently mentioned due date 16.09.2021 vide proceedings dated 18.04.2024).
13.	Total sale consideration	Rs.24,67,870/- (as per BBA page 44 of complaint)
14.	Amount paid by the complainant	Rs.22,55,588/- (page 59B of complaint)
15.	Occupation certificate	Not obtained

16. Offer of possession

Not offered

B. Facts of the complaint

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

- i. That the respondent made an advertisement in the newspaper 'Hindustan Times' regarding the location, specification, amenities, and time of completion of the project "63 GOLF DRIVE" under the Haryana Government's Affordable Housing Policy, located at Sector 63A, Gurugram, Haryana.
- ii. That the complainant approached the respondent and booked a unit vide application no. SGD (A) 6823, admeasuring carpet area of 605.1 sq. ft. and a balcony area of 94.94 sq. ft.
- iii. Thereafter, a draw of the said project was held, and the complainant was allotted unit no. E118, 11th floor, tower E. Further, the respondent and the complainant executed a one-sided builder buyer agreement on 18.09.2017, which created a false belief that the project would be completed in a timely manner. The total consideration of the unit was Rs.24,67,870/- and the complainant paid the amount as and when the demands were raised by the respondent.
- iv. That as per the builder buyer agreement, the respondent was supposed to hand over the actual physical possession of the unit by 16.09.2020 excluding the grace period of 6 months.
- v. That the complainant has paid the payment as demanded against the total consideration amount in a timely manner.
- vi. However, due to the slow pace of construction and absence of basic amenities, the respondent has delayed the handover of possession. The complainant has fulfilled their responsibility in making the necessary payments and is not in breach of any terms of the agreement.

- vii. That the respondent has charged interest on delayed instalments at a rate that is illegal, arbitrary, and unilateral, as per the agreement. The respondent has also not provided the benefit of input tax credit on the GST amount recovered from the complainant, despite committing to do so. The complainant has also raised a complaint to the STP, Haryana office regarding this issue.
- viii. That the respondent has indulged in various tricks and blatant illegalities in the booking and drafting of the builder buyer agreement, with a malicious and fraudulent intention, causing deliberate and intentional mental and physical harassment to the complainant.
- ix. That the slow pace of work at the construction site and the respondent's half-hearted promises have caused the complainant great financial and emotional loss. The malafide intentions of the respondent and the non-delivery of the flat unit in time have accrued huge losses to the complainant, affecting their family's future plans.
- x. That the cause of action to file the complaint is within the jurisdiction of the authority.

C. Relief sought by the complainant.

9. The complainant has sought the following relief(s):
- I. Direct the respondent to pay delayed possession charges/ interest till the delivery of possession.
 - II. Direct the respondent to ensure project is in habitable condition with all the amenities mentioned in the brochure.
 - III. Direct the builder to pay input tax credit on the GST amount after calculation, given GST paid @ 8% to the complainant as per the HRERA rules
10. The complaint was filed on 06.07.2022 in the Authority. The respondent was granted opportunity to put in appearance and file a reply. However, despite specific opportunities respondent failed to file reply. In view of the same, the

matter was proceeded ex-parte against the respondent vide order dated 07.12.2023. Also, in the CR/2417/2022 the matter was proceeded ex-parte against the respondent vide order dated 07.12.2023 due to failure of the respondent to file reply after giving several opportunities.

11. 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 submissions made by the complainant.

D. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

13. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

14. 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

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(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.

15. 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.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to pay delayed possession charges/ interest.

E.II Direct the respondent to ensure project is in habitable condition with all the amenities mentioned in the brochure.

16. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

17. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 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."*

18. 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 endeavour to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale

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consideration, in accordance with the terms as stipulated in the present agreement."

19. 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.
20. 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.

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21. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges till delivery of possession. 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, *ibid*. 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.”

22. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, 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.

23. 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., 18.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

24. 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;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

26. 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 16.09.2016. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 16.09.2020. 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 16.09.2020 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. As such the due date for handing over of possession comes out to be 16.03.2021.

27. 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 @ 10.85% p.a. w.e.f. 16.03.2021 till the actual handing over of possession or valid offer of possession plus 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

28. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties, after receiving occupation certificate from the competent authority.

G.III Direct the builder to pay input tax credit on the GST amount after calculation, given GST paid @ 8% to the complainant as per the HARERA rules

29. The respondent is directed to charge the GST as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e.

GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

30. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.
31. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

H. Directions of the authority

32. 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):

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- i. The respondent is directed to pay interest to each of the complainant(s) against the paid-up amount at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay from the due date of possession 16.03.2021 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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(za) of the Act.

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- vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
35. Files be consigned to registry.

Dated:18.04.2024



V.I-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM