

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

**Complaint no.:** 76 of 2022  
**Date of complaint:** 20.01.2022  
**Order pronounced on:** 02.05.2024

Birdhi Chand Khater

**R/o:** G-68, first floor, South City-II, Gurugram, Haryana-  
122018

**Complainant**

Versus

M/s Sunrays Heights Pvt. Ltd.

**Registered office:** 211, Ansal, 16 K.G. Marg, New  
Delhi-110001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Rohit Sharma (Advocate)

Complainant

Shri Naveen Sharma (Advocate)

Respondent

**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 allottee as per the agreement for sale executed *inter se*.

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**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 of the project	"Sixty-Three Golf Drive", Sector 63-A, Gurugram"
2.	Project area	5.9 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 Valid up-to 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.	Allotment letter	11.01.2016 (page 27 of complaint)
8.	Flat Buyer's agreement	04.03.2016 (page 04 of complaint)
9.	Unit no.	D-22 (Page 27 of complaint)
10	Unit area admeasuring	Carpet Area- 604.83 sq. ft Balcony Area- 95.10 sq. ft. (Page 27 of complaint)
11	Possession clause	<b>4-Possession</b> <i>The developer shall endeavour 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>  <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</i>

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		<i>beyond the said 4 years from the date of commencement of project.</i>
8.	Environmental Clearance	16.09.2016 (page 10 of complaint)
9.	Building plan approval	10.03.2015 (taken from another file CR/2814/2021 decided on 30.11.2023 of same project)
10.	Due date of possession	16.03.2021 (calculated from the date of environmental clearance being later with additional grace period of 6 months in lieu of covid-19)
11.	Total sale consideration	Rs.24,66,870/- (page 43 of complaint)
12.	Amount paid by the complainant	Rs.22,45,862/- (as per additional documents submitted by complainant)
13.	Final reminder	14.03.2024 (submitted by complainant during proceedings dated 28.03.2024)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- I. That the respondent launched its project 63 Golf Drive and invited applications from the public by advertising in various newspapers of the state as per the Affordable Housing Policy, 2013.
- II. That based on the invitation of the respondent the complainant submitted his application vide application number SGDA3209 along with 5% of the total cost Rs.1,20,775/- being the booking amount for participating in the draw of the apartments.
- III. Thereafter, the draw of the project was conducted and the unit no. D22, type-2 was allotted to the complainant. Subsequently, after the allotment of the unit, the complainant paid the next instalment of 20% of the total cost as per the payment plan agreed between the parties.

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- IV. Further, the flat buyer agreement was executed between the parties on 04.03.2016. As per the flat buyer's agreement both the parties were liable to fulfil their part of obligations.
- V. That the complainant fulfilled all its commitments and obligations by making the timely payment as per the payment schedule agreed between the parties. However, the respondent failed to keep his commitment of handing over the physical possession of the subject unit by 16.09.2020.
- VI. That after getting delay in getting the possession of the subject unit the complainant started following up with the respondent over phones, e-mail and visited their office for so many days but received no response.
- VII. That the complainant left with no option sent a legal notice dated 29.11.2021 seeking possession and compensation towards the delay in possession @ 15% p.a. as per the buyer's agreement.
- VIII. That the complainant cleared all the agreed schedule instalment as per the buyer's agreement and till date after a delay of 16 months neither the possession nor the compensation of delay had been paid by the respondent.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief:
- I. Direct the respondent to handover the physical possession.
  - II. Direct the respondent to pay delay possession charges.
  - III. Direct the respondent to pay litigation cost of Rs.1,00,000/-.
5. The present complaint was filed on 20.01.2022 in the Authority. The respondent was granted several opportunities to put in appearance and file 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.
6. 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**

7. 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**

8. 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**

9. 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) The promoter shall-**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

**E. Findings on the relief sought by the complainant.**

**E.I Direct the respondent to handover the physical possession.**

**E.II Direct the respondent to pay delay possession charges.**

11. 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.
12. 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."*

13. 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 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."*

14. 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.

15. 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.

**16. 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."*

17. 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.

18. 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., 02.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

19. 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;"*



20. 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.
21. 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.

22. 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*.

23. 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.

**E.III Direct the respondent to pay litigation cost of Rs.1,00,000/-**

24. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**F. Directions of the Authority**

25. 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 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 till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to complainant before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- III. The complainant is 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 complainant w.r.t. obligation conferred upon him 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.



**HARERA**  
**GURUGRAM**

Complaint No. 76 of 2022

VI. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

26. Complaints stand disposed of.

27. Files be consigned to registry.

**Dated: 02.05.2024**



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

**HARERA**  
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