

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

Complaint no.: 476 of 2022
Date of filing: 23.02.2022
Order pronounced on: 23.05.2024

Neeraj Jain

R/o: House no.249/4, Jawahar Nagar, Jacumpura,
Behind Gupta Hospital, Gurugram, Haryana

Complainant

Versus

Sunrays Heights Pvt. Ltd.

Regd. Office: 211, Ansal Bhawan,16 K.G.Marg,
New Delhi

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rishabh Jain

None

Advocate for complainant

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 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 63A Gurugram
2.	Nature of the project	Affordable housing project
3.	RERA registered/ not registered and validity status	Registered 249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	Unit no.	E-22, tower-E (page 70 of complaint)
5.	Unit admeasuring	613.31 sq. ft. (carpet area) (page 70 of complaint)
6.	Provisional allotment letter - cum-demand letter	11.01.2016 (page 53 of complaint)
7.	Date of execution of buyer's agreement	05.09.2016 (date on stamp paper annexed with buyers' agreement as no date mentioned in the agreement page 56 of complaint)
8.	Possession clause	4.1 <i>The Developer shall endeavour to handover possession of the said flat within a period of 4 (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> *Note a/s 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 licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.
9.	Date of building plan	10.03.2015 (taken from another file CR/2814/2021)

A

		decided on 30.11.2023 of same project)
10.	Date of environment clearance	16.09.2016 (as per the details submitted by respondent/builder in the Authority planning branch) (Note: inadvertently mentioned environment clearance 29.09.2016 vide proceedings dated 14.03.2024)
11.	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 being later) (Note: inadvertently mentioned environment clearance 29.03.2021 vide proceedings dated 14.03.2024)
12.	Total sale consideration	Rs.25,00,790/- plus taxes and other charges. (as per allotment letter page 53 of complaint)
13.	Amount paid by the complainant	Rs.16,01,513/- (page 74 of complaint)
14.	Cancellation notice	22.04.2024 (Page 06 of written submissions submitted by complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That the complainant made an application for allotment of a unit in the project "63 Golf Drive", Sector-63 A, Gurugram, Haryana via application no. SGDA0438 dated 29.03.2015 and paid Rs.1,24,000/- via cheque no. 803744 as registration amount to the respondent.
- II. Thereafter, in draw, the complainant was allotted a unit bearing no. E22 admeasuring carpet area 613.31 sq. ft. and balcony area of 95.10 sq. ft. with a free two-wheeler parking for a total consideration of Rs.25,00,790/-. The respondent issued a provisional allotment letter cum demand letter dated

- 11.01.2016 for allotment of subject unit and further demanded Rs.5,52,995/- from the complainant to confirm the allotment of the subject unit.
- III. Further, the builder buyer agreement was executed between the parties on 05.09.2016. The complainant, in total paid a sum of Rs.16,01,513/- till 30.06.2018, around 64% of the total cost of the unit as per the payment plan, as and when demanded by the respondent. However, the respondent failed to timely handover the possession of the unit to the complainant after a delay of around twelve months.
- IV. As per clause 7(a) of the application form, due date of possession was to be calculated four years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, which comes out to be 16.09.2020. Furthermore, providing grace period of 6 months on account of force majeure due to COVID-19 outbreak the due date of possession comes out to be on 16.03.2021.
- V. That the complainant approached the respondent and pleaded for delivery of possession of his unit as per the agreement on various occasions, but no information was provided.
- VI. That the respondent, despite promising the complainant that the unit would be delivered by 16.03.2021 has not paid any interest for delay on the paid amount till date and has not delivered the possession of unit in time. The complainant did not intend to withdraw from the project and the respondent is liable to pay delay period interest.

C. Relief sought by the complainant

4. The complainant has sought following relief:

- i. Direct the respondent to complete the development of the flat along with all facilities and amenities like water, electricity, roads, parks, etc. immediately.
- ii. Direct the respondent to handover the legal and rightful possession of the flat to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.
- iii. Direct the respondent to pay interest for every month of delay in handing over the possession of the flat since 16th march, 2021 to the complainant with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal and rightful possession of the flat to the complainant.
- iv. Direct the respondent to charge interest from the allottee complainant for the due amount as per the rate prescribed under the act, 2016.
- v. Direct the respondent to provide a fixed date of delivery of possession.
- vi. Direct the respondent to not charge anything which is not mentioned in the agreement.
- vii. Direct the respondent to pay litigation cost of Rs.1,00,000/-.

D. Written Submissions by the complainant.

5. The complainant submitted written submission on 06.05.2024 in the Authority.
- a. That the respondent sent a letter dated 12.04.2024 and sought payments from the complainant without mentioning the amount due against the subject unit.
 - b. Thereafter, the complainant sent an email dated 17.04.2024 to the respondent requesting for the updated statement of accounts. However, the respondent sent a letter dated 22.04.2024 stating allotment of the subject unit stand cancelled.
 - c. The complainant is willing to pay the due amounts after adjustment of delay possession charges. So, the cancellation letter sent by the respondent is unlawful.

6. The present complaint was filed on 23.02.2022 in the Authority. The respondent was granted opportunity to put in appearance and file a reply. However, despite giving specific opportunities respondent failed to file reply before the Authority. In view of the same, the matter was proceeded ex-parte against the respondent vide order dated 21.09.2023.

7. 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.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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 complainants at a later stage.

F. Findings on the relief sought by the complainant.

- F.I Direct the respondent to complete the development of the flat along with all facilities and amenities like water, electricity, roads, parks, etc. immediately.
- F.II Direct the respondent to handover the legal and rightful possession of the flat to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.
- F.III Direct the respondent to pay interest for every month of delay in handing over the possession of the flat since 16th march, 2021 to the complainant with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal and rightful possession of the flat to the complainant.
- F.IV Direct the respondent to charge interest from the allottee complainant for the due amount as per the rate prescribed under the act, 2016.
- F.V Direct the respondent to provide a fixed date of delivery of possession.
- F.VI Direct the respondent to not charge anything which is not mentioned in the agreement.

12. 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.

13. Upon perusal of written submissions made by the complainant, it has been found that allotment of subject unit was cancelled by the respondent on

22.04.2024 due to non-payment. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid or not?"

14. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below :-

"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

15. As per the aforesaid cancellation clause of the affordable housing policy, 2013 the respondent failed to fulfil the prerequisite of publishing the due notice in the daily newspaper. Therefore, the prescribed procedure as per clause 5(iii)(i) of the policy of 2013 had not been followed by the respondent to cancel the unit of the complainant.

16. Moreover, the Authority notes that the respondent issued a letter dated 12.04.2024, instructing the complainant to process the payment of the outstanding amount against the allotted unit. However, the Authority notes that this letter did not specify any amount to be paid by the complainant. In response, the complainant sent a letter on 17.04.2024, requesting an updated account statement for the subject unit. Despite this, the respondent proceeded to cancel the unit on 22.04.2024.

17. Based on the documents presented, it is evident that the respondent's actions demonstrate malafide intent. The respondent issued a payment request

without specifying the required amount and cancelled the unit despite the complainant's clear willingness to pay and continue with the project, as evident by the letter dated 17.04.2024 and from the complaint wherein complainant is seeking possession of the subject unit.

18. Additionally, the respondent was required to hand over the project by 16.09.2020 under the Affordable Housing Policy, 2013, excluding the COVID-19 grace period. Even with a six month grace period in lieu of Covid-19 pandemic to 16.03.2021, the respondent failed to complete the project. More than three years later, the project remains incomplete and the respondent has not obtained the occupation certificate from the competent authority. The interest accrued during the delay period significantly reduces the amount payable by the complainant. The respondent's actions were in bad faith, as they failed to adjust the delay period interest and issue an updated account statement, provide a specific payment amount to be paid by the complainant. In light of these findings, the cancellation of the allotment on 22.04.2024 is deemed invalid and is hereby quashed as issued in bad faith.
19. 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."

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

21. 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 favor 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.
22. Moreover, the project was to be developed under the Affordable Housing Policy, 2013, which clearly mandates that the project must be delivered within four years from the date of approval of the building plan or environmental clearance, whichever is later. However, the respondent has chosen to disregard the policy provision and has instead opted to reiterate its own self-serving, pre-set possession clause.
23. While crafting such unfair clause, the respondent has openly exploited its dominant position, effectively leaving the allottee with no choice but to accept and sign the document. This conduct by the respondent demonstrates its blatant disregard for the allottee's rights and its prioritization of its own unfair advantage over the allottee's lawful entitlements. 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.

24. 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.”

25. 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.

26. 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., 23.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

27. 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;"*

28. 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.

29. 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.

30. 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*.

31. 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.

F.VII Direct the respondent to pay litigation cost.

32. 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.

G. Directions of the Authority.

33. 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 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.
 - VI. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
34. Complaint stands disposed of.
35. File be consigned to registry.

Dated: 23.05.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram