

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

Complaint no. : 2677 of 2023
Complaint filed on : 04.07.2023
Date of first hearing: 16.11.2023
Date of decision : 08.05.2024

Mahesh Sharga
R/o- S-90 Pallavpuram Phase-2, Meerut, Dulhera (UP)

Complainant

Versus

Sunrays Heights Private Limited

Registered Office: 211, 2nd Floor, Ansal Bhawan, 16
Kasturba Gandhi Marg, New Delhi 110001.

Corporate Office: 41, District Centre, Sector-56, Gurgaon
122001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Vijay Pratap Singh, Advocate

Complainant

None

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 63-A, Gurugram"
2.	Project area	5.9 acres
3.	Nature of the project	Affordable Group Housing Policy- Residential Flat
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 Valid upto 07.08.2019
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA registration details	Registered 249 of 2017 dated 26.09.2017
7.	Provisional Allotment Letter	11.01.2016 (Page 18 of complaint)
8.	Flat buyer's agreement	09.02.2016 (Page 20 of complaint)
9.	Unit no.	B-63, Tower B (Page 33 of complaint)
10	Unit area admeasuring	Carpet Area- 604.83 sq.ft Balcony Area- 95.10 sq.ft. (Page 33 of complaint)
11	Possession clause	<p>4- Possession</p> <p>"4.1 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."</p> <p>*Note: As per affordable housing policy 2013</p> <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 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.
12	Date of building plan approval	10.03.2015 (As stated by complainant at page 14 of complaint and confirmed from another file CR/2814/2021 decided on 30.11.2023 of same project)
13	Date of environment clearance	16.09.2016 (As stated by complainant at page 14 of complaint and confirmed from another file CR/5238/2022 of same project)
14	Due date of possession	16.03.2021 (Calculated from date of environment clearances i.e., 2.09.2016 being later, which comes out to be 16.09.2020 + 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)
15	Basic sale consideration	Rs. 24,66,870/- (BBA at page 33 of complaint)
16	Amount paid by the complainant	Rs.22,45,862/- (As per the demand notice issued by respondent to the complainant dated 16.05.2019 at page 36 of complaint)
17	Occupation certificate	Not obtained
18	Offer of possession	Not offered
19	Final Reminder sent by the respondent to complainant to clear all the outstanding dues	14.03.2024 (By way of additional documents dated 14.03.2024)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent made advertisement in the newspaper 'Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name "63 GOLF DRIVE", Sector- 63A floated under Haryana Government's Affordable Housing Policy, Gurugram, Haryana. The complainant approached the respondent for book'ding of a unit vide application no. SGDB2239.
- II. That the complainant was allotted flat no. B-63 at tower B having carpet area of 604.83 sq. ft. and balcony area of 95.10 sq. ft. on 19.06.2017.
- III. That the respondent to dupe the complainant in their nefarious net executed a one-sided builder buyer agreement on 09.02.2016, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. That the total consideration of the flat was Rs.2466870/- along with applicable taxes. The complainant has paid Rs.19,12,833/- against demand of Rs.22,45,862/- from the builder till date of filing of present case as and when the demands were raised by the respondent in time bound manner.
- IV. That as per clause 4.1 of the buyer's agreement, the respondent was liable to hand over the possession of a subject unit before 16.09.2020(exclusive of the grace period of 6 months) considering the project commencement date from the date of environment clearance being 16.09.2016.
- V. That owing to slow-paced construction and absence of basic amenities, respondent delayed in giving possession of the unit to the complainant. That as per Section 19(6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of the terms of the agreement.

- VI. That respondent has charged illegal interest on delayed instalment @ 15 % p.a. compounded quarterly in terms of clause 3.7 of the agreement and later from July, 2018 @10.5% compounded quarterly, whereas, as per the BBA the offer of delay possession penalty for the builder towards buyers is nil. This is totally illegal, arbitrary and unilateral.
- VII. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA with a malicious and fraudulent intention and caused deliberate and intentional mental and physical harassment of the complainant and his family who has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking delayed possession charges. The builder buyer agreement consists of very stringent and biased contractual terms which are illegal, arbitrary, unilateral, and discriminatory in nature. As every clause of the agreement is drafted in a one-sided way, even a single breach of unilateral terms of builder buyer agreement by complainant, will cost him forfeiting of earnest money and delay payment charges @15%. Respondent has neither prepared the builder buyer agreement as per the terms and conditions mentioned under the Haryana Affordable Policy 2013 nor as per the Act, 2016.
- VIII. That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.
- IX. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant in time has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered dark as the planning with which

the complainant invested her hard earned monies have resulted in subzero results and borne thorns instead of bearing fruits.

X. That the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainant

4. The complainant has sought following relief:

- i. Direct the respondent to pay interest @ 8.65% per annum as per prevailing MCLR plus 2%, on paid amount of Rs.22,45,862/- for delay period starting from 16.09.2020 till actual handover of physical possession by the respondent to complainant.
- ii. Direct the respondent to handover possession of the unit in habitable condition with all the amenities as mentioned in the brochure of the project.

5. The present complaint was filed on 04.07.2023 in the Authority. On 16.11.2023, the respondent was directed to file the reply within two weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent. Therefore, in view of order dated 31.01.2024, the defence of the respondent was struck off.

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

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

8. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings regarding relief sought by the complainant.

- F. I Direct the respondent to pay interest @ 8.65% per annum as per prevailing MCLR plus 2%, on paid amount of Rs.22,45,862/- for delay period starting from 16.09.2020 till actual handover of physical possession by the respondent to complainant.**

F.II Direct the respondent to handover possession of the unit in habitable condition with all the amenities as mentioned in the brochure of the project.

9. The complainant was allotted unit no. B-63, tower B, in the respondent's project at basic sale price of Rs.24,66,870 under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 09.02.2016. The possession of the unit was to be offered within 4 years from approval of building plans (10.03.2015) or from the date of environment clearance (16.09.2016), whichever is later, which comes out to be 16.09.2020 calculated from the date of environment clearance being later. 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 06.09.2020 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. Therefore, the due date of handing over possession comes out to be 16.03.2021. The complainant paid a sum of Rs.22,45,862/- towards the subject unit, and the complainant is ready and willing to retain the allotted unit in question.
10. The counsel for the complainant placed on record a final reminder letter dated 14.03.2024 being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of Rs.6,47,001/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid or not in the eyes of law?"

11. 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 installments 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 installments 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".

12. As per the aforesaid cancellation clause of the affordable housing policy, the final reminder letter dated 14.03.2024 was sent to the complainant to clear the outstanding dues amounting to Rs.6,47,001/- within a period of 15 days of the said reminder. However, 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. Therefore, the said cancellation being bad in eyes of law is hereby quashed.

13. 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."

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

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 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.

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

The complainant is seeking delay possession charges at the prescribed rate. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *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."

18. 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.

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., 08.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

20. 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., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

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 apartment was to be delivered within 4 years from the date of commencement of project (*as per clause 1(iv) of Affordable Housing Policy, 2013, all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy*). In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is not given, so the date is taken from another file of the same project i.e., 16.09.2016. 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 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 pandemic. As such the due date for handing over of possession comes out to be 16.03.2021. 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. 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. 16.03.2021 till the actual handing over of possession or offer of possession + 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
24. 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.

H. 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 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 at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the actual handing over of possession or offer of possession + 2 months whichever is earlier.
 - II. 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, *ibid*.
 - III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
 - V. The respondent is directed to handover physical possession of the subject unit to the complainant within a period of 60 days after obtaining occupation certificate from the competent authority.
 - VI. The respondent shall not charge anything from the complainant which is not part of the agreement.
26. Complaint stands disposed of.

27. File be consigned to registry.

Dated: 08.05.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM