

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

Complaint no.: 4452 of 2023
Date of filing of complaint: 27.09.2023
Date of first hearing: 03.01.2024
Order pronounced on: 16.10.2024

Suresh Kumar Lamba

Resident of: House no. 882, VPO Khairi, Pabra, Hisar-125112

Complainant

Versus

M/s Sunrays Heights Pvt. Ltd.

Registered office: 211, Ansal, 16 Kasturba Gandhi Marg, New Delhi-110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Chaitanya Adlakha (Advocate)

Ms. Arpita (Advocate)

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 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*.



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:

Sr. 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 (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 valid upto 25.09.2022
7.	Provisional Allotment Letter	11.01.2016 (Page 16 of complaint)
8.	Flat buyer's agreement	02.12.2022 (Page 20 of complaint)
9.	Unit no.	27, Tower H (Page 34 of complaint)
10.	Unit area admeasuring	Carpet Area- 605.10 sq.ft Balcony Area- 94.94 sq.ft. (Page 34 of complaint)
11.	Possession clause	4- Possession "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." (BBA at page 24 of complaint)



		<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 licences shall not be renewed beyond the said 4 years period from the date of commencement of project.</i>
12.	Date of building plan approval	10.03.2015 (Page 28 of reply)
13.	Date of environment clearance	16.09.2016 (Page 34 of reply)
14.	Due date of possession	16.03.2021 (Calculated from date of environment clearances i.e., 16.09.2016 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. 24,67,870/- (BBA at page 34 of complaint)
16.	Amount paid by the complainant	Rs.5,48,096/- and Rs. 3,00,000/- paid after cancellation of allotment (To be clarified)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Reminder cum pre-intimation of cancellation letter sent by respondent to complainant	25.01.2023 and 02.02.2023 (Page 56 and 57 of reply, respectively)
20.	Final Reminder sent by respondent to complainant	14.02.2023 (Page 46 of reply)
21.	Cancellation letter	30.05.2023 (Page 16 of complaint)
	Publication of cancellation in newspaper "The Statesman"	28.04.2023 (Page 60 of reply)
22.	Reminders sent by the respondent to complainant to collect payment against cancelled unit	19.04.2024 and 08.04.2024 and e-mail dated 13.06.2023 (Page 68, 69 and 63 of reply, respectively)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent allotted unit no. H-27 admeasuring 605.1 sq. ft. carpet area and 94.94 sq. ft. balcony area , in its project "63 Golf Drive", Sector 63A, Gurugram under the Affordable Housing Policy, 2013 on 11.01.2016. The total sale price was Rs. 24,67,870/-.
- II. That an amount of Rs. 5,48,096/- was paid on 27.01.2016, after receipt of the allotment letter. The complainant approached the respondent several times to know about the progress of the project, however, nothing significant was done on the site till 2022. Even the builder buyer agreement was not signed till the year 2022.
- III. That after much persuasion by the complainant, the builder buyer agreement was executed between the parties on 02.12.2022. In clause 3.2 of the agreement, it is provided that the allottee has paid 5% of the total price at the time of application and 20% at the time of allotment and thus, a total of 25% of the total price must be paid at the time of signing of the agreement and same was paid by the complainant. Further, in terms of clause 3.2 of the agreement, the balance 75% of the total price was to be paid in six equated monthly instalments spread over three years.
- IV. That the respondent pressurised the complainant to pay the balance 75% amount in one go, however as per the agreement dated 02.12.2022, 12.5% of the total amount was to be paid after six months, i.e. in June 2023. The complainant made an advance payment of instalment of Rs. 3 Lakh on 11.05.2023 under the pressure and threat of the respondent. The respondent again threatened that if full amount of the unit is not paid by the complainant at once, his allotment will be cancelled.
- V. That as per clause 4 of the agreement, the developer has to handover the unit within a period of 4 years from the date of commencement of project.



The complainant visited office of the respondent; however, the respondent cancelled the allotment of the complainant due to non-payment and a copy of an e-mail dated 30.05.2023 was handed over to the complainant.

- VI. That the complainant approached the respondent many times to abide by the agreement dated 02.12.2022, and raise demand for payment of instalments as per the schedule, but the developer is denying to accept any further payment due to the reason that the market rate of the property has increased multi folds and the developer in greed is bent on to defeat the legal right of the complainant and deprive him of this property.
- VII. That the completion certificate has not been issued till date to this project and moreover, the license has also expired, thus, the said cancellation is illegal. Therefore, the said cancellation be set aside as the complainant is ready to pay the amounts due to him as per the agreement.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to set aside cancellation letter dated 30.05.2023 and restore the allotment of the complainant.
 - II. Direct the respondent to get the unit constructed and obtain occupation certificate as early as possible.
 - III. Direct the respondent to abide by the terms and conditions of the agreement dated 02.12.2022 and collect the instalments as per condition 3.2 of the agreement.
5. 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 based on these undisputed documents and submissions made by the complainant.

D. Reply by the respondent:

6. The respondent contested the complaint on the following grounds:

- I. That the allottee approached the respondent and expressed interest in booking a unit in the affordable housing developed group housing



- developed by respondent known as "63 Golf Drive" situated in Sector 63, Gurugram, Haryana.
- II. That a residential unit bearing no. H-27, Tower-H, Type A admeasuring carpet area of 605.10 sq. ft. (approx.) and balcony area of 94.94 sq. ft. (approx.) the unit was provisionally allotted vide allotment letter dated 11.01.2016. Thereafter, a builder buyer agreement dated 02.12.2022 was executed between both the parties.
- III. That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- IV. That as per clause 4.1 of the agreement the respondent endeavored to offer possession within a period of 4 (four) years from the date of obtainment of all government sanctions and permissions including environment clearance, whichever is later. The possession clause of the agreement is on par with the clause 1(iv) of the Affordable Housing Policy, 2013.
- V. That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. The Ld. Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 23.03.2020, on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.



VI. That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. The construction and development of the project was deeply affected by circumstances which are beyond the control of the respondent. The respondent faced certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (Two) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made, and materials were procured at 3-4 times the rate and the construction of the Project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts. Additionally, even before normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available laborers, contractors etc. for the construction. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020.

- VII. That as per license condition, developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance (EC) since they fall in the category of special time bound project under Section 7B of the Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal Group Housing Project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of Project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. Section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.
- VIII. That in a similar case where such orders were brought before the Ld. Authority was in Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent.
- IX. That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of effect of COVID also.

- X. That the Hon'ble UP REAT at Lucknow while deciding appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021 has also granted the extension of 116 days to the promoter on account of delay in completion of construction on account of restriction/ban imposed by the Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- XI. That Karnataka RERA vide notification No. K-RERA/Secy/04/2019-20 and No. RERA/SEC/CR-04/2019-20 has also granted 9 months extension in lieu of Covid-19 pandemic. Moreover, this Ld. Authority had in similar matters of the had allowed the benefit of covid grace period of 6 months in a no. of cases.
- XII. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. Despite the default caused, the respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. The respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.
- XIII. That the respondent has applied for occupation certificate on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from

computation of the time utilized for implementation and development of the project.

- XIV. That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which under clause 5(iii)(b), clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the installments as per the government policy under which the unit is allotted. At the time of application, the complainant was aware of the duty to make timely payment of the installments. Not only as per the Policy, but the complainant was also under the obligation to make timely payment of installments as agreed as per the BBA.
- XV. That the complainant is a habitual defaulter and had failed to make timely payment of the installments. The complainant had last made payment on instalment within 6 months from allotment in October 2016 and thereafter, despite repeated reminders no payment was made towards installments. The reminder letters are demands sent by the Respondent are as follows:

S. No.	PARTICULARS	DATE
1.	Demand Notice	18.10.2016
2.	Demand Notice	24.04.2017
3.	Reminder	11.08.2017
4.	Reminder	24.08.2017
5.	Demand Notice	24.07.2018
6.	Demand Notice	04.02.2019
7.	Final Reminder	08.11.2019
8.	Demand Notice	14.02.2022

- XVI. That the complainant is in default of non-payment from since 2016. The complainant cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments. The non-payment by the complainant severally affected the construction of the project and funds of the respondent. That due to default of the complainant, the respondent had to take loan to complete the project

and is bearing the interest on such amount. The respondent reserves its right for claim of damages before the appropriate forum.

- XVII. That it is the obligation of the complainant under the Affordable Housing Policy, 2013 (as on the date of Allotment) and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013. In compliance of the same, the respondent issued following reminders requesting the complainant to make the outstanding payment:

S. No.	PARTICULARS	DATE
1.	Reminder-I	25.01.2023
2.	Reminder-II	02.02.2023
3.	Reminder-III	14.02.2023

- XVIII. That in complete default the complainant failed to make payment within 15 days and thus, the respondent also made publication in the Hindi Newspaper on 28.04.2023.
- XIX. That despite the final opportunity, the complainant failed to make complete payment towards the said unit. Thus, the unit of the complainant stands cancelled as per the agreed terms and conditions in under the agreement. The respondent requested the complainant to collect the refundable amount. The respondent vide letters dated 13.06.2023, 08.04.2024 and 19.04.2024 requested the complainant to come forward and collect refund.
- XX. That this Hon'ble Authority has adjudicated similar issues of termination/cancellation and has upheld the same noting the default on part of the Complainant. For instance, this Authority in Rahul Sharma Vs Roshni Builders Private Limited MANU/RR/0975/2022 noted that the respondent had issued reminders, pre-cancellation letter and the last and final opportunity letter to the complainant. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.

XXI. That the complainant has not only in breach of the buyer's agreement but also in breach of the Affordable Housing Policy and the RERA Act, by failing to make the due payments of installments. The complainant is responsible for all the consequences of breach of the buyer's agreement and violation of RERA. The unit already stands cancelled, and this complaint is bound to be dismissed in favor of the respondent.

E. 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.

E.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. 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

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.

F. Findings on the relief sought by the complainant.

FI Direct the respondent to set aside cancellation letter dated 30.05.2023 and restore the allotment of the complainant.

FII Direct the respondent to get the unit constructed and obtain occupation certificate as early as possible.

FIII Direct the respondent to abide by the terms and conditions of the agreement dated 02.12.2022 and collect the instalments as per condition 3.2 of the agreement.

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. The complainant booked a unit in the affordable group housing colony project of the respondent known as "Sixty-Three Golf Drive" situated at sector 63-A, District- Gurgaon, Haryana and was allotted unit no. 27, in tower -H for a sale consideration of Rs.24,67,870/-. A buyer's agreement was executed on 02.12.2022. The possession of the unit was to be offered with 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. 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 far as grace period is concerned, the same is allowed

for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 16.03.2021.

13. The complainant is always ready and willing to retain the allotted unit in question. However, the complainant has only paid a sum of Rs.5,48,096/- on 27.01.2016 and thereafter, on 11.05.2023 a further sum of Rs.3,00,000/- towards the unit allotted to him. The respondent vide reminder/demand letters dated 18.10.2016, 24.04.2017, 11.08.2017, 24.08.2017, 24.07.2018, 04.02.2019, 08.11.2019, 14.02.2022 and final reminder letters dated 25.01.2023, 02.02.2023 and 14.02.2023 intimated the complainant for payment of the outstanding dues but he failed to adhere the same. It is observed that the complainant failed to pay the remaining amount as per the schedule of payment and hence the unit was cancelled. The continuous default on part of the complainant to make payment of outstanding dues constrained the respondent to make a publication of the same in English Newspaper "The Statesman" on 28.04.2023. Thereafter, again vide e-mail dated 30.05.2023 the respondent communicated to the complainant about the cancellation of his unit and further asked him to take refund of the amount paid by the complainant. Reminders dated 19.04.2024, 08.04.2024 and e-mail dated 13.06.2023 were also sent by the respondent to the complainant to collect the payment against the cancelled unit.
14. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 29.01.2021. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"

15. 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".*

16. In the present case, the agreement to sell was executed inter-se the parties on 02.12.2022, and the complainant/allottee has paid an amount of Rs.8,48,096/- which constitutes only 34.36% of the sale consideration. Accordingly, the respondent /builder issued numerous reminder/demand letters dated 18.10.2016, 24.04.2017, 11.08.2017, 24.08.2017, 24.07.2018, 04.02.2019, 08.11.2019, 14.02.2022 and final reminder letters dated 25.01.2023, 02.02.2023 and 14.02.2023 to the complainant. Thereafter, the respondent made a publication of the same in English Newspaper "The Statesman" on 28.04.2023 and finally the unit was cancelled on 30.05.2023. The authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation dated 30.05.2023 is held to be valid.

17. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy

2013 along with interest at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from date of cancellation of allotment i.e., 30.05.2023 till the actual realization of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the Authority


18. 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 hereby directed to refund the paid-up amount of Rs.8,48,096/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with interest @11.10% per annum from the date of cancellation of allotment i.e., 30.05.2023 till the actual realization of the amount.
- II. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaints stand disposed of.

20. Files be consigned to registry.

Dated: 16.10.2024



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