

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

Complaint no.: 497 of 2024
Date of filing of complaint: 09.02.2024
Date of first hearing: 27.03.2024
Order pronounced on: 23.10.2024

Ruchika Yadav

Resident of: House no. 217/12, Krishna Colony, Gali
No. 06, Gurugram-122001

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. Vijay Pratap Singh (Advocate)

Mr. Harshit Batra (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 19 of complaint)
	Allotment Letter	20.07.2017 (Page 20 of complaint)
8.	Flat buyer's agreement	12.04.2016 (Page 21 of complaint)
9.	Unit no.	105, Tower J (Page 34 of complaint)
10	Unit area admeasuring	Carpet Area- 361.89 sq.ft Balcony Area- 69.84 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)

		<p>*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.</p>
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.14,82,480/- (BBA at page 34 of complaint)
16.	Amount paid by the complainant	Rs.13,49,064/-
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Final Reminder sent by respondent to complainant	15.03.2024 (Page 4 of reply to application filed by respondent)
20.	Cancellation letter	22.04.2024 (Page 10 of reply to application filed by respondent)
21.	Publication of cancellation in newspaper "Aaj Samaj"	06.04.2024 (Page 11 of reply to application filed by respondent)

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 booking of a unit vide application no. SGD(B)4846.

- II. That the complainant was allotted flat no. J-105 at tower J having carpet area of 361.89 sq. ft. and balcony area of 69.84 sq. ft. on 20.07.2017.
- III. That the builder buyer agreement was executed between the complainant and the respondent on 12.04.2016. The total consideration of the flat was Rs.14,82,480/- exclusive of tax and other charges. The complainant has paid Rs.13,50,064/- against demand of Rs. 13,50,064/- 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 the builder has charged excess interest of Rs.2,043/-. Same was brought to the knowledge of the builder telephonically but every time the respondent stated that the excess amount of interest shall be waived off in the due course, but the same has not yet been done.
- V. That the respondent is threatening and pressurising the complainant via e-mail that she has to make the payment as per the affordable housing policy as per agreed terms of the BBA without considering the amendment with regard to time linked plan substituted to construction linked payment plan amended in the said policy from November 2021 onwards. As per the BBA, the project is already delayed by more than 2.5 years from the date of promise.
- VI. 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.

- VII. That the respondent is always making wrong interpretation of the Haryana Affordable Housing Policy and threatening the complainant to cancel the unit, treating the customer as a default customer without raising the last demand letter to the buyer. It is categorically stated that the extract from Haryana government gazette dated 19.08.2013 is crystal clear.
- VIII. That respondent has charged illegal interest on delayed instalment @ 15 % p.a. compounded quarterly. The respondent has charged illegal interest of Rs.2,043/- and despite the respondent protest the same has not yet been waived off by the respondent on the plea that the same shall be reversed at the time of possession of the flat. This is totally illegal, arbitrary and unilateral.
- IX. 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.
- X. 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.
- XI. 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(s):

I. Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR rate plus 2% on the paid amount of Rs.13,50,064/- for delay period starting from 16.09.2020 till actual handover of the physical possession by the respondent to the complainant with penal interest, given that 16.09.2020 was the promised date of delivery of possession (along with pendente lite and future interest till actual possession) and waive off the illegal interest etc. raised by the respondent.

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 complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.

II. That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. It is further submitted that timely payment was the essence to ensure timely completion of construction & handover of the apartments as per the terms of the policy. The Pith & Substance' of the Affordable Housing Policy is clearly captured in its essence, wherein the Intended Beneficiaries' were given 36 months to



pay the entire cost of the apartment (25% upfront and rest 75% in 6 equal monthly instalments), against which the developer (respondent) was provided with the timeline of 48 months to complete the project subject to timely payment.

- III. That the present complaint is liable to be dismissed on the sole ground that the complainant has concealed the true and necessary facts from the Authority. The complainant is chronic defaulter in timely payment of the installments as per the payment plan annexed with the builder buyer agreement. It is pertinent to mention here that respondent has sent final payment reminder letter to complainant on 22/04/2024. And there before respondent had given many opportunities to deposited the remaining amount through payment reminder notice on 15/03/2024 before that respondent and published in newspaper AAJ SAMAJ on 06/04/2024 to cancelation. It is pertinent mention here that if the complainant was aware about the respondent bank is Frizz/blocked so he can come forward in respondent office but there after the complainant never approached the respondent to restore the allotment and made payment.
- IV. It is further imperative to note that despite many undulations such as Covid (loss of 6 months), GRAP Restrictions and most importantly non-compliance on the part of the 'Intended Beneficiaries'/allottees/complainant(s); i.e. non-payment, the respondent has still fulfilled our obligations in terms of completing the construction, and has already applied for the OC in the month of December 2023; even whilst facing the disruption in supply chain, migration of labourers due to Covid, and without seeking any escalation linked to escalated cost of construction due to inflation. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the respondent then the

respondent shall be automatically entitled to the extension of time for delivery of possession.

- V. That it is pertinent to mention here that as per law of Affordable housing policy whom can apply this scheme only who have no house their name and his spouse but in this case applicant are trying to put the curtain on this fact. The complainant has grab a shelter of a needy person due to field the Affordable housing scheme because complainant has his own house and enjoying his life in a highly expensive society of Haryana.
- VI. That, moreover the applicant somehow wants to harass the answering respondent as the plea of the applicant is mere a façade/pretense through the real intentions are otherwise and such a calculative and cunning act of the applicant has conveyed not only a wrong message to mislead the Authority but also posed a threat in mind of answering respondent so as to succumb to the illegal, illogical and unjustified demand of the applicant.

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.

F.I Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR rate plus 2% on the paid amount of Rs.13,50,064/- for delay period starting from 16.09.2020 till actual handover of the physical possession by the respondent to the complainant with penal interest, given that 16.09.2020 was the promised date of delivery of possession (along with pendente lite and future interest till actual possession) and waive off the illegal interest etc. raised by the respondent.

11. 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. 105, in tower -J for a sale consideration of Rs.14,82,480/-. A buyer's agreement was executed on 12.04.2016. 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.

12. The complainant is always ready and willing to retain the allotted unit in question and has paid a sum of Rs. 13,49,064/- towards the said unit. However, the respondent on the other hand had cancelled the unit of the complainant on 22.04.2024 after sending a final reminder letter dated 15.03.2024 stating non-payment of last instalment as the ground for cancellation. 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?"
13. 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 updated account details for depositing the outstanding amount. Despite this, the respondent proceeded to cancel the unit on 22.04.2024.
14. 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.

15. 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.

16. 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."

17. 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."

18. 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.
19. 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.
20. 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.

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

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

“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

22. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

24. The definition of term ‘interest’ as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the

promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

“(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4 of the buyer's agreement, the possession of the subject apartment was to be delivered within 4 years from the date of commencement of project (as per clause 1(iv) of Affordable Housing Policy, 2013, all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the “date of commencement of project” for the purpose of this policy). In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is 16.09.2016. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of

possession comes out to be 16.09.2020. Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19. As such the due date for handing over of possession comes out to be 16.03.2021.

27. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 16.03.2021 till the actual handing over of possession or valid offer of possession plus 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

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

G. Directions of the Authority

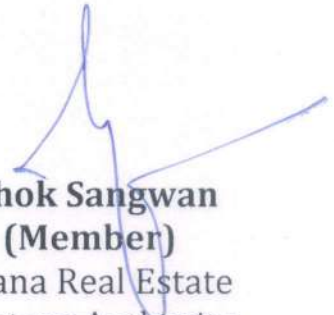
29. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay from the due date of possession 16.03.2021 till valid offer of possession plus two months, after obtaining occupation certificate from the competent Authority or actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- 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 allottee 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 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. Section 19(10) of Act of 2016 conferred upon her 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., 11.10% 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.

30. Complaint stand disposed of.

31. Files be consigned to registry.

Dated: 23.10.2024


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



HARERA
GURUGRAM