

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

Complaint no. : 2577 of 2023  
First date of hearing: 15.11.2023  
Date of decision : 06.08.2024

**Dal Chand Saini**

**R/O : 442/9, Shivpuri Gurgaon Haryana-  
122001**

**Complainant**

**Versus**

**M/S Sunrays Height Pvt Ltd**

**Regd office : 211 2<sup>nd</sup> Floor Ansal Bhavan  
16 Kasturba Gandhi Marg, New Delhi -110001**

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman  
Member  
Member**

**APPEARANCE:**

Sh. Rajender Kumar  
Sh. Harshit Batra (Advocate) with Shri.  
Vijay Verma CEO of the company in person

**Complainant**

**Respondent**

**ORDER**

1. The present complaint dated 12.06.2023 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 there under or to the allottees 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:

S.N.	Particulars	Details
1.	Name of the project	Sixty-three Golf Drive, sector-63-A, Gurugram
2.	Project area	2.38125 acres
3.	Nature of project	Group Housing colony
4.	RERA registered/not registered	Registered vide registration no. 249 of 2017 dated 26.09.2017
5.	DTPC License no.	82 OF 2014 dated 08.08.2014
	Validity status	07.08.2024
	Name of licensee	P.G.Propmart. Pvt. Ltd. in collaboration with Bluejays Realtech Pvt. Ltd.
6.	Unit no.	D-31 [annexure A-3 page 28 of complaint]
7.	Unit measuring of A-22, Tower-A	Carpet area 356.18 sq. ft. and balcony area 69.84 sq. ft. [annexure A-3 page 28 of complaint]
8.	Allotment Letter of unit no. D-31	27.06.2017 [at pg.28 of complaint]

9.	Date of execution of apartment buyer agreement [ABA]	03.02.2016
10.	Possession clause	<p><b>4. POSSESSION</b></p> <p><b>4.1 The developer shall endeavor to handover possession of the said flat within a period of four years ie., 48 months from the date of commencement of project, subject to force majeure &amp; timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</b></p> <p><b>Note: As per affordable housing policy 2013</b></p> <p><i>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.</i></p>
11.	Date of building plan approvals	<b>10.03.2015 (page 38 of complaint)</b>
12.	Date of environment clearance	<b>16.09.2016 [Annexure A-1, page 11 of complaint]</b>
13.	Due date of possession	<p><b>16.03.2021</b></p> <p>(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</p>

		having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic.)
14.	Total sale consideration	Rs. 14,60,640/- [as per SOA dated 14.03.2024, page 17 of application filed by respondent]
15.	Total amount paid by the complainant	Rs. 13,29,290/- [as per SOA dated 14.03.2024, page 17 of application filed by respondent]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Cancellation letter	22.04.2024 [page 26 of application filed by respondent]

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
  - I. That the respondent has represented themselves as one of the renowned brands in the market of affordable housing. During the course of their business, they had obtained a license bearing no. 82 of 2014 on 5.90 acres land in revenue estate of village Ullahwas, District-Gurugram, Sector-63A, Haryana for developing affordable housing under the Haryana Government Affordable Housing Policy, 2013.
  - II. That after the receipt of the aforesaid License as a procedural requirement had got their building plans approved vide memo no. ZP-1063/AD (RA)/2015/3732 and environment clearance certificate from

the State Environment Impact Assessment Authority Haryana vide memo no. SEIAA/HR/2016/800 from the concerned departments.

- III. That the respondent has launched the 63 Golf Drive project and invited applications from the general public by advertising the same in various newspapers of the state as per the Affordable Housing Policy, 2013.
- IV. Meanwhile the RERA has come into existence and as per the RERA guidelines had registered their 63 Golf Drive Project with Haryana Real Estate Regulatory Authority at Panchkula vide RERA Registration Number 249 of 2017.
- V. That based on the invitation of the respondent the respective allottee(s) has submitted his application vide application number SGDA3209 along with 5% and first installment (Within 15 days from the date of allotment) which is for an amount of Rs. 3,20,559/- vide receipt bearing No. 1090 vide cheque bearing no. dated 21.01.2016 drawn on State Bank of India, branch Sector-4 Gurugram as per the Affordable Housing Policy, 2013 for participating in the draw of the apartments.
- VI. Subsequent to the aforesaid payment the respondent allotted a unit bearing no. D31admeasurong carpet area of 356.18 Sq. Ft and balcony area of 69.84 Sq Ft, vide allotment letter dated 27.06.2017 in the said project.
- VII. That various demand was raised by the respondent, subsequent to which till date the present complainant had paid an amount of Rs. 13,29,290/- against the total sale consideration of Rs. 14,59,640/- excluding applicable taxes and other charges. As per the buyer's agreement dated

03.02.2016 both i.e., the developer and the respective buyer were liable to fulfill their part of obligations.

- VIII. That the allottee had fulfilled all their commitments/obligations as per the buyer agreement i.e., making the timely payment as per the payment schedule agreed between the parties but the respondent has failed to keep his commitment of handing over the physical possession of the respective apartment on 16.09.2020.
- IX. That the respondent had till date did not raise the final demand letter as per the terms and condition of the buyer's agreement executed as the construction of the proposed affordable group housing colony is not completed in all aspect and either will complete in near future.
- X. That the allottee in the present complaint is a senior citizen and spent all its hard-earned money in the present project and the respondent kept itself hiding itself from giving the possession of the respective unit to the complainant after receiving all the agreed installment as per schedule payment plan.
- XI. That after getting delay in getting the possession of the respective apartment the allottee started following up with the respondent over phones, e-mail and even visited their office for so many days allottee has not received any response.
- XII. That the complainant had clear all the agreed schedule installment as per the buyer's agreement and till date after a delay of 32 months neither the possession nor the compensation of delay had been paid by the respondent company to the complainant till date.

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

4. The complainant has sought following relief(s).
  - I. Direct the respondent to handover the possession of the unit.
  - II. Direct the respondent to pay interest for every month of delay at the rate of interest of 15% as per clause 3.7 of the buyer's agreement dated 03.02.2016.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
  - a. At the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
  - b. That the complainant is estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
  - c. That the complainant has not come before the Authority with clean hands and has suppressed vital and material facts from this authority. The correct facts are set out in the succeeding paras of the present reply.
  - d. That the complainant approached the respondent and expressed interest in booking an apartment in the affordable group housing being developed by respondent known as "63 Golf Drive" situated in Sector 63, Gurugram Haryana. Prior to the booking, the allottees forming part of the complainant association conducted extensive and independent enquiries with regard to the project and only after being fully satisfied

on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- e. That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. D-31, tower D, type A admeasuring carpet area of 356.18 sq. ft. (approx.) and balcony area of 69.84 sq. ft. (approx.) was provisionally allotted vide allotment letter dated 27.06.2017. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor.
- f. Thereafter, an agreement to sell dated 03.02.2016 was executed between the complainant and the respondent. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- g. 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. Being a contractual relationship, reciprocal promises are bound to be maintained. It is respectfully submitted that 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. As per clause 4.1 of the agreement the respondent endeavored



to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance (hereinafter referred to as the “**Commencement of Project**”), whichever is later. The possession clause of the agreement is with par with the clause 1(iv) of the Affordable Housing Policy 2013.

- h. That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of environment clearance, comes out to be 16.09.2020. The 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 25.03.2020, 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**.
- i. That however, 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 such circumstances which are beyond the control of the respondent.
- j. That the respondent was faced with 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 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. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

- k. That additionally, even before the 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 labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 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 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing

curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of covid-19 pandemic and again all the activities in the real estate sector were forced to stop. Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. During the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. On the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide order/direction dated 26th of May, 2020 on account of 1st wave of Covid-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

- I. It is importance to mention herein 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 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.

- m. Therefore, it is safely concluded that the said delay of 422 days in the seamless execution of the project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure* in terms with the agreement.
- n. That in a similar case where such orders were brought before the Ld. Authority was in the ***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 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 builder.
- o. 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.

- p. 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 developer/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.
- q. That it is pertinent to note 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.
- r. 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. It must be noted by the Hon'ble Authority that despite the default caused, as a gesture of goodwill, with good intent 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. Further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.

- s. 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. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.
- t. That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which 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 about the duty to make timely payment of the installments. Not only as per the Policy, the complainant was also under the obligation to make timely payments of installments as agreed as per the BBA.

- u. That the complainant has **failed to make any payment of the installment due at "within 36 months from the due date of Allotment" due on April 2019** along with partial payments towards previous installments. In accordance with the same, it is submitted that 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 as stated above. The non-payment by the complainant severally affected the construction of the project and funds of the respondent. 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.
- v. That it is the obligation of the complainant under the Affordable Housing Policy, 2013 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.
- w. That the complainant stands in default since April 2019 and the same is way before the proposed date of possession. That the respondent sent multiple demands and reminders dated 17.10.2016, 21.04.2017, 05.05.2017, 25.01.2018, 17.11.2018, 14.03.2024, 29.03.2024 & 12.04.2024 requesting the complainant to pay the instalment.
- x. That in compliance with the above-mentioned provision the respondent issued a reminder letter dated 14.03.2024 and 12.04.2024 requesting the complainant to make the outstanding payment. In complete default

the complainant failed to make payment within 15 days and thus, the respondent also made publication in the Hindi Newspaper on 06.04.2024. Thus, the unit of the complainant is liable to be cancelled in terms of the Clause 5(iii) (i) affordable housing policy and the clause 3.7 of the BBA.

- y. That it is clearly evident that the complainant despite all the reminders failed to make payment against the instalment. The respondent earnestly requested the complainant to make payment. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant.
- z. However, despite the final opportunity, the complainant failed to make complete payment towards the said unit which led to the issuance of the cancellation letter dated 22.04.2024. The respondent no. 1 has the right to terminate the unit as per the agreed terms and conditions in under the agreement.
- aa. The above-mentioned provisions note the mandatory obligation of the complainant to make the due payments against the unit, which under no circumstance whatsoever, can be escaped.
- bb. That the complainant herein has also filed the complaint through the buyers association in the matter namely *Sixty-Three Golf Drive Flat Buyers Association vs Sunrays Heights Pvt. Ltd. (C. No. CR/1244/2022)* and under that Complaint as well the complainant has prayed for same reliefs.



**F. Finding on objections raised by the respondent.**

**F.I Objection regarding force majeure conditions:**

7. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT Hon'ble Supreme Court, introduction of new highway being NH-352W, transferring the land, transferring the land acquired for it by HUDA to GMDA, then handing over to NHAI and re-routing of high-tension lines passing through the land of the project. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay.
8. It is observed that the respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.09.2020 and is claiming benefit of lockdown amid covid-19. In view of notification no. 9/3-2020 dated 26.05.2020, the Authority has allowed six months relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 16.09.2020 + 6 months, possession was to be handed over by 16.03.2021, but the respondent has failed to handover possession even within this extended period. Moreover, the occupation certificate/part OC is not yet obtained by the respondent from the competent Authority.

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

**G. I Direct the respondent to handover the possession of the unit.**

**G. II Direct the respondent to pay interest for every month of delay at the rate of interest of 15% as per clause 3.7 of the buyer's agreement dated 03.02.2016**

9. The complainant booked a unit in the project named as "Sixty-Three Golf Drive" and paid Rs. 13,29,290/- on different dates against the total sale consideration of Rs. 14,59,640/-. On 03.02.2016 a BBA was executed between the parties. The contention of the complainant is that there has been an inordinate delay in the construction of the project and that the construction is very slow paced.
10. During proceedings dated 02.07.2024, in exercising the power under section 36 of the Act 2016, the respondent was restrained from cancelling the subject unit and is further directed not to create any third-party rights till the next date of hearing.
11. The counsel for the respondent stated that the complainant was in default in making payment since 2016 after the notice sent. But in spite of repeated reminders, the payment of outstanding amount was not made leading to cancellation of the unit on 22.04.2024. The OC of the unit has not been obtained by the respondent and no offer of possession was made in view of the prior cancellation.
12. 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?"
13. The Authority notes that the complainant has paid approx. 91% of the sale consideration, and 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. Upon adjustment of this interest, the respondent would, in fact be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest. 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.

14. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."*

15. 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."*

16. 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.

17. 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.
18. 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.
19. **Admissibility of delay possession charges at prescribed rate of interest:**  
The complainant is seeking delay possession charges. 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. 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]***  
*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."*

20. 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.
21. 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., 06.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
22. 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—  
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 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.*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.00 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. 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. 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.
25. 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% 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*.
26. 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.
27. The respondent has submitted that the complainant has also filed a ***Complaint bearing no. 1244/2022 titled as Sixty Three Golf Drive Flat Buyer's Association versus Sunrays Heights Pvt. Ltd.*** and sought the same relief in that particular matter also. Thus, the present complaint is not maintainable. It is to be noted that the above mentioned complaint is filed by Association by which the common issues faced by the complainant-allottees has been represented and the complainant is also a member of that association. But the present complaint has been filed by the complainant

seeking the relief of DPC & possession of the particular unit allotted to the complainant.

**F. Directions of the Authority**

28. 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 cancellation letter 22.04.2024, of the allotted unit issued by the respondent to the complainant is hereby ordered to be set-aside with a direction for reinstate the subject unit and issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest i.e., 11% p.a. on the outstanding amount towards complainant/allottee as prescribed under rule 15 of the rules.
- ii. The respondent is directed to pay interest to each of the complainant(s) against the paid-up amount at the prescribed rate of interest i.e., 11% 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.
- iii. The respondent is directed to handover the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon 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.
- iv. 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. 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% 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. 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.
- vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.



(Ashok Sangwan)  
Member



(Arun Kumar)  
Chairman



(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.08.2024