

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

Complaint no.: 1552 of 2024
Date of filing of complaint: 19.04.2024
Date of first hearing: 25.07.2024
Order pronounced on: 11.12.2024

Deepali Aneja

Resident of: House no. 3066, SBI Officers Society,
Sector 49D, Chandigarh-160047

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:

S.No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63-A, Gurugram"
2.	Project area	5.9 acres
3.	Nature of the project	Affordable Group Housing Policy- Residential Flat
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 Valid upto 07.08.2019
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA registration details	Registered 249 of 2017 dated 26.09.2017 valid upto 25.09.2022
7.	Flat buyer's agreement	29.10.2018 (Page 22 of complaint - Undated BBA but the said date is agreed to by both the parties in their respective pleadings)
8.	Unit no.	95, Tower G (Page 34 of complaint)
9.	Unit area admeasuring	Carpet Area- 368.34 sq.ft Balcony Area- 69.84 sq.ft. (Page 34 of complaint)
10.	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 25 of complaint) *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

		<i>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>
11.	Date of building plan approval	10.03.2015 (Page 32 of reply)
12.	Date of environment clearance	16.09.2016 (Page 38 of reply)
13.	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)
14.	Basic sale consideration	Rs. 15,08,280/- (BBA at page 34 of complaint)
15.	Amount paid by the complainant	Rs.15,13,333/- (Payment plan detail report dated 17.09.2024 at page 59 of reply)
17	Occupation certificate	08.12.2023 (Page 48 of reply)
18	Offer of possession	Not offered
20.	Final Reminder sent by respondent to complainant	14.05.2024 (Page 57 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
- a) That in 2015, the complainant got information about an affordable housing project "Sixty-Three Golf Drive" at Sector 63 A, Gurugram, Haryana through an advertisement in some local newspaper and booked a 1-BHK residential unit vide application bearing no SGDG0117 for which he had paid an amount of Rs. 75,000/- towards booking the unit vide receipts no. 63GD/ARE/0141 dated 23.10.2018, along with application form.
 - b) That the complainant was allotted unit no. G95 at tower G vide acknowledgement bearing no. SGD (G) 0117. The respondent issued a letter

cum demand letter against the allotted unit G95, admeasuring 368.34 sq. ft. carpet area and 69.84 sq. ft. balcony area. The unit was booked under the time linked payment plan as per the mandate under the affordable housing policy 2013 for a sale consideration of Rs. 15,08,280/-.

- c) That the unit was booked under the time linked payment plan as per the mandate under the affordable housing policy 2013 for sale consideration of Rs. 1508280/-. On 29.10.2018, a pre-printed one sided, arbitrary and unilateral buyer's agreement for allotted unit was executed between the parties. As per clause 4.1, the respondent had to complete the construction of flat and handover the possession within 4 years from the date of commencement of project.
- d) That till date the respondent has raised a demand of Rs. 15,13,333/- and the same was paid by the complainant i.e., 100% of demanded money, but when complainant observed that there is very slow progress in the construction of subject flat for a long time, he raised their grievance to the respondent.
- e) That the complainant has always paid the instalment on time and the last instalment was paid on 07.02.2024. That the project is already delayed by more than 3 years, and it is expected to take around 1-2 years more for the completion of the project.
- f) That it was promised by the respondent at the time of receiving payment for the unit that the possession of fully constructed unit at the time of sale, would be handed over to the complainant on and after the payment of last and final instalment, these instalment becomes accrue on every 6 months after the commencement of construction work and the respondent was under obligation to deliver the project complete in all respect as and when the respondent takes the last instalment or by maximum till 19.09.2020 or 15.03.2021.
- g) That the complainant has paid Rs. 15,13,333/- and the same was paid by the complainant before filing the case before Hon'ble Authority, as and when

demanded by the respondent. The builder thereafter issued an e-mail dated 09.02.2024 and has falsely alleged that there is deficit in payment made without any supporting evidence. The letter was issued as reminder, without even raising the last demand against the sales consideration to the complainant. The escrow bank account of the respondent was blocked by the Authority vide its order dated 12.02.2024 and the respondent acting contrary to the said order demanded money from the complainant by way of physical cheque and wants to get affidavit signed. The same shall be treated as contempt of the orders of this Authority.

- h) That as per section 19 (6) of the Act of 2016, the complainant has fulfilled his responsibility regarding 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 its terms of the agreement. But the respondent is deliberately and intentionally not raising the last demand as per the amended construction linked plan of the Haryana Affordable Policy, 2013.
- i) That the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the unit which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of this Authority.
- j) That the complainant further relies on the judgements passed by the Authority in favour of the complainant in complaint case no. 437 of 2022 "Dilvinder Singh vs Sunrays Heights Pvt. Ltd." And in complaint case no. 2814 of 2021 "Sunita Malhotra Vs Sunrays Heights Pvt. Ltd."

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 plus 2% on the paid amount of Rs.15,13,333/- for delay period starting from 15.03.2021 till the actual handover of physical

possession or offer of possession plus 2 month after obtaining OC, whichever is earlier, as per the provisions of the Act.

- II. Direct the respondent to handover actual physical possession of the booked flat.
 - III. Direct the respondent to raise the last demand as per Affordable Housing Policy towards consideration of the unit, to make the payment.
 - IV. Direct the respondent to quash e-mail dated 09.02.2024 issued by respondent demanding illegal arbitral amount of Rs.4,41,938/- as per account statement dated 28.03.2024 without even raising the last tax invoice/ demand letters.
 - V. The Authority to guide as to in which bank account complainant should deposit last demand if raised by respondent as escrow account of respondent is freezed by Authority vide its order dated 12.02.2024.
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:
 - a) That the complainant approached the respondent and expressed her interest in booking an apartment in the affordable group housing project being developed by the respondent "63 Golf Drive" situated in Sector- 63, Gurugram.
 - b) That the complainant vide application form SGDG-0117 applied to respondent for allotment of the unit. Pursuant thereto, a residential unit bearing no. G-95, tower G admeasuring carpet area of 368.34 sq. ft. and balcony area of 69.84 sq. ft. was allotted vide acknowledgement application bearing no. SGDG-0117 dated 16.09.2018. The complainant represented that she shall remit every instalment on time as per the payment plan. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit to her.
 - c) That a builder buyer agreement was executed between the parties on 29.10.2018. The terms and conditions of the same are binding on the parties. As per clause 4.1 of the agreement, the due date of possession was subject to

the allottee having complied with the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. The respondent endeavored to offer possession within a period of four years from the date of obtaining all the government sanctions and permissions including environment clearance, whichever is later. The possession clause of the agreement is at par with clause 1 (iv) of the Affordable Housing Policy, 2013.

- d) That the building plan was approved on 10.03.2015 by DGTCP and the environmental clearance was obtained on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 16.09.2020. Further, the Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed 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 on Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- e) 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 circumstances which are beyond the control of the respondent, i.e., certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab and 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 and 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 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. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

- f) That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the Project with no available labourers, contractors etc. for the construction of the Project. During the period from 12.04.2021 to 24.07.2021 (103 days), each activity including the construction activity was banned in the State. It is also to be noted that 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 an extension of only six months was granted against three months of lockdown.
- g) That as per license condition developers 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.

- h) 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. The respondent has already received the fire NOC, lift NOC, the sanction letter for water connection and electrical inspection report.
- i) 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, the 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. 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.
- j) 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 was liable to make the payment of the installments as per the 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 in terms of clause 3 of BBA and clause 5(iii)(b) of the Policy, 2013. In case of default by the complainant the unit is liable to be cancelled as per clause 5(iii) of Affordable Housing Policy, 2013.

k) That the Complainant stands in default of the payments as per the payment plan. The respondent sent multiple demands from time to time requesting the complainant to pay the instalment. The following demand notices have been sent by the respondent:

Particulars	Date
Demand Notice	23.10.2018
Demand Notice	14.02.2019
Demand Notice	20.07.2019
Demand Notice	29.12.2021
Demand Notice	31.12.2021
Demand Notice	15.05.2023
Final Reminder	14.05.2024

l) That the SOA dated 17.09.2024 states that the amount paid by the complainant is Rs.15,13,333/-. The complainant has failed to make the timely payment and is liable for the payment of delayed payment interest on the unpaid instalments. Despite various reminders, the complainant has failed to make payment against the instalment.

m) That without prejudice to the rights of the respondent, the unit of complainant can be retained only after payment of interest on delayed payments from the due date of installment till the date of realization of amount. Further delayed interest if any must be calculated only on the amounts deposited by the complainants towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the complainants towards DPC or any taxes/statutory payments, etc.

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 objections raised by the respondent.

F.I Objection regarding force majeure conditions:

11. 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. 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 as it is a well-settled principle that a person cannot take benefit of his own wrong.

12. 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 pay interest @ 8.65% per annum as per the prevailing MCLR plus 2% on the paid amount of Rs.15,13,333/- for delay period starting from 15.03.2021 till the actual handover of physical possession or offer of possession plus 2 month after obtaining OC, whichever is earlier, as per the provisions of the Act.

G.II Direct the respondent to handover actual physical possession of the booked flat.

13. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. The factual matrix of the case reveals that 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. 95, in tower G for a sale consideration of Rs.15,08,280/-. The builder buyer agreement was executed between the parties on 29.10.2018. 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.

15. 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."*

16. Clause 4 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"4-Possession

4.1 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."

17. 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.”

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

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

20. 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;”

21. 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.
22. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 4.1 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.

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

26. Further, an application dated 29.11.2024 was submitted by the complainant regarding the letter dated 26.11.2024 sent by the respondent giving a last opportunity to clear the outstanding dues by 10.12.2024, failing which the unit of the complainant-allottee shall be cancelled and reallocated to the third party. The relevant para of the said letter is extracted below:

"Please consider this as our last attempt to include you as a party of "Sixty-Three Golf Drive". In case you do not clear your outstanding dues latest by 10/12/2024; we would act within the legal framework and enlist your unit as cancelled and reallocate your unit to some other client to fulfil the deficit outstanding amount."

G.III Direct the respondent to raise the last demand as per Affordable Housing Policy towards consideration of the unit, to make the payment.

G.IV Direct the respondent to quash e-mail dated 09.02.2024 issued by respondent demanding illegal arbitral amount of Rs.4,41,938/- as per account statement dated 28.03.2024 without even raising the last tax invoice/ demand letters.

27. The Authority is of the view that the respondent/promoter shall not charge anything from the complainant(s) which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.

28. Perusal of case file reveals that the demand raised by the respondent via e-mail dated 09.02.2024 was towards payment of interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any 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.

G.V The Authority to guide as to in which bank account complainant should deposit last demand if raised by respondent as escrow account of respondent is freezed by Authority vide its order dated 12.02.2024.

29. The instant complaint was listed for pronouncement of orders on 11.12.2024 vide proceedings dated 16.10.2024. The Authority is of the view that the

respondent acted malafidely by sending the said letter dated 26.11.2024 to the complainant to clear the outstanding dues, without further specifying any specific amount payable by the complainant. Moreover, the respondent is itself in default by not handing over the possession within the agreed time frame. Thus, 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.

30. Therefore, the Authority is of the view that the complainant shall deposit the last demand raised by the respondent, if any outstanding remains after adjustment of the delayed possession charges as and when the escrow account of the respondent is de-frozen by the Authority.

H. Directions of the Authority

31. 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, *ibid*.

- 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. As per Section 19(10) of Act of 2016, the complainant 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 complainant shall deposit the last demand raised by the respondent, if any outstanding remains after adjustment of the delayed possession charges as and when the escrow account of the respondent is de-frozen by the Authority. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and under the Affordable Housing Policy, 2013.
32. Complaint stands disposed of.
33. Files be consigned to registry.

Dated: 11.12.2024


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