

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

Complaint no. : 1488 of 2024
First date of hearing: 26.07.2024
Date of decision : 19.11.2024

Anubhav Bansal

**R/o : H.no: 568, Sector 16D, Chandigarh-
160015**

Complainant

Versus

M/S Sunrays Height Pvt Ltd

**Regd office : 211 2nd 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. Arun Bansal (Advocate)
Sh. Tushar Behmanu (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 22.04.2024 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 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.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.	G 118
7.	Unit measuring of G 118	Carpet area 613.31 sq. ft. and balcony area 95.10 sq. ft.
8.	Allotment Letter of unit no. G 118	11.01.2016 (Annexure P/2, page 41 of complaint)
9.	Date of execution of apartment buyer agreement [ABA]	NA
10.	Possession clause	4. POSSESSION 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 & timely payment by the allottee towards the sale consideration,



		<p><i>in accordance with the terms as stipulated in the present agreement.</i></p> <p><i>*Note: Possession clause taken from another file of the same project (Cr no. 2771-2023)</i></p> <p>Note: As per affordable housing policy 2013</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	10.03.2015
12.	Date of environment clearance	16.09.2016 (Annexure P5, page 50 of complaint)
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.	Total sale consideration	Rs. 25,00,790/-
15.	Total amount paid by the complainant	Rs. 22,77,720/-
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

18.	Cancellation letter	22.04.2024 (as per application under section 36 of the Act, 2016 filed by the complainant)
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B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the complainant in response to an advertisement dated 01.06.2015 applied for allotment of residential unit in the aforesaid affordable housing project and also submitted the requisite amount of Rs.1,25,040/- as advance deposit for booking the apartment in the aforesaid project.
- II. That the complainant has been allotted an apartment in project "63 Golf Drive" situated in Sector 63-A, Gurgaon, Haryana by respondent promoter i.e., Sunrays Heights Private Limited under the Affordable Housing Policy 2013 of Government of Haryana, vide allotment letter dated 11.01.2016 i.e., unit bearing no. G118, having carpet area of 613.31 sq. ft. and balcony area of 95.10 sq. ft. on total sale consideration of Rs.25,00,790/- and demanded Rs.5,51,955/- to complete 25% of the allotment amount. The said amount was duly deposited on 19.01.2016.
- III. That the respondent has acknowledged the receipt of the amount Rs. 22,77,720/- as duly paid by complainant for aforesaid unit. The complainant was promised the delivery of possession within the period of 4 years, as the unit being under the affordable housing scheme.
- IV. That the allotment of the aforesaid unit was made in January, 2016 in terms of application for allotment dated June, 2015. As such the possession was to be delivered by January, 2020. The instalments were to be raised in terms of the construction and the possession was to be delivered accordingly. However, the instalments were being deferred



and five has been demanded. The delay in construction is causing delay in delivery of the possession. The possession of the said apartment has not been delivered to the complainant so far. The construction of the project was grossly delayed by more than four years and till now the construction of the said project is incomplete. The construction is not being carried out and as such possession could not be offered in near future.

- V. That since the complainant is and was always ready and willing to make the payment of balance instalments as and when the same were to be demanded. However, since the same were construction linked, therefore, the complainant was suffering on account of deposits held by the respondent since long and the possession was being delayed.
- VI. That accordingly, the complainant filed the complaint initially on 19.05.2020 before the Authority, Gurugram and at that point of time there was no notification regarding grace period of 6 months on account of force majeure due to COVID-19 outbreak as the said notification came on 26.05.2020. The said complaint as such was registered on 13.10.2020. The same is apparent from the record. The complainant was not only seeking the possession but also interest on the amounts deposited by him which were lying deposited with the respondent since long and also sought compensation on account of delay in delivery of possession as well as interest on the deposits made by the allottee and qua calling of instalments without any basis and further prayed for rescheduling the payment plan after calculating the interest amount received by the respondent apart from other reliefs.
- VII. That thereafter the complainant preferred an appeal against the aforesaid order dated 08.09.2021 before the Appellate Tribunal vide Appeal No. H-REAT-318-2022 (GRG) dated 28.04.2022 praying for

direction to respondent to pay the interest amount qua delay in delivery of the possession and to reschedule the payment plan after calculating the interest on the amount deposited by the complainant and received by the promoter/builder from the date of its deposit till the handing over of possession.

- VIII. That the Appellate Tribunal passed an order dated 11.10.2023 in the aforesaid appeal. The said appeal was dismissed being withdrawn and with the liberty to the complainant to file the complaint afresh in view of objection raised by the respondent that the possession and interest would go side by side as such, the possession part would arise on the filing of fresh complaint. The respondent also gave no objection to the same.
- IX. That the respondent was issued licence no. 82 of 2014 dated 08.08.2014 by the Director, Town and Country Planning Department, Haryana, has been examined vis-à-vis the provisions of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017.
- X. That it is important to mention here that the respondent was given the environment clearance certificate vide letter no. SEIAA/HR/2016/800 dated 16.09.2016 and the respondent as such could have realized the allotment money from the allottee only thereafter. The respondent has no right or authority to raise the allotment money prior to said date. As such the complainant is entitled to the interest on the amount lying deposited with the respondent.
- XI. That the respondent got their project registered with the Authority and was given the registration certificate no.249 of 2017 dated 26.09.2017. A perusal of the said certificate would clearly shows that the promoters cannot accept a sum more than 10% of the cost of the apartment as an

advance payment without first entering into a written agreement for sale.

- XII. That the complainant submits that under the affordable housing policy, 2013, the allotment of flat would be permitted only after date of commencement of the project and the date of commencement of the project would be the date of approval of building plans or grant of environmental clearance. The project is to be completed within 4 years from the said date. Thus, the allotment money could be demanded only after the commencement of project.
- XIII. That now the respondent has issued a letter dated 15.03.2024 calling for the Rs.10,51,586/- within a period of 15 days from the date of reminder which was served only on 26.03.2024. The respondent did not give the date of occupation or handing over the possession of project nor given the interest accrued to the complainant on account of deposits held by the respondent. The said deposit would come over and above the amount claimed by the respondent. It is surprising that the respondent themselves delayed the construction and were deferring the calling of instalments and now at this stage they issued a impugned letter calling the instalments with interest. The respondent is not entitled to any interest, instead, the complainant is entitled to the interest for the deposits held by the respondent without offering possession. The complainant has been requesting the respondent time and again to reschedule the payment after necessary calculations. The complainant reiterated the same and replied to the said impugned letter vide e-mail dated 08.04.2024.
- XIV. That the complainant has got the calculation made as per the procedure. The said calculations would show that the complainant is entitled to

refund of amount approx. Rs.10 Lacs apart from interest. As such, the complainant is filing the present complaint for necessary relief.

XV. That as such the complainant seeks the indulgence of the Authority to direct the respondent to reschedule the payment plan after calculating the interest part on the deposits held by the respondent from the date of its deposits till the delivery of possession along with damages apart from the cost for the delay of the project as the complainant could not use the apartment and other reliefs as prayed for.

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 24% from the date of payments till the date of possession of the unit.
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.
6. The respondent/promoter put in appearance through its Advocate and marked attendance on 02.07.2024, 17.09.2024 and 08.10.2024 respectively. Despite specific directions, it failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide order dated 17.09.2024, the defence of the respondent was struck off. However, in view of justice, an opportunity is granted to the parties to file written submissions.
7. The complainant and respondent have filed the written submissions on 19.09.2024 and 24.10.2024 respectively which are taken on record and has

been considered by the Authority while adjudicating upon the relief sought by the complainant.

D. Written submission on behalf of respondent

- a. That the complainant, vide booking application applied to the respondent for allotment of the unit in the project and respondent allotted respective unit against the allotment to the complainant. The complainant represented to the respondent that they shall remit every instalment on time as per the payment schedule given in the affordable housing policy, 2013.
- b. That the project falls under affordable housing scheme and accordingly Affordable Housing Policy 2013, was framed by the Haryana Government, Town and Country Planning Department under section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975. The policy itself is very clear that the buyers are under obligation to make the payment as per the payment schedule without any default within 36 months from the date of 'commencement of project' and the possession has to be handover to the buyer by the developer within 4 years from the date of the commencement of the project. In simple words, the project has to be completed from the funds of the buyer's only and if the buyer's defaulted in making timely payment. The respondent herein, infused its own funds and also sourced from the market on very high rate of interest and is bound to pay burdens of loan repayment along with interest. As such the complainant himself is trying to get benefited from his own wrongs, which is not only unethical but also bad in law. Therefore, the complaint filed by the complainant herein is liable to be dismissed.
- c. That as per clause 4.1 of the BBA, 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. The rights and obligations of allottees 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 obtaining of all government sanctions and permissions including environment clearance, whichever is later. The possession clause of the agreement is at par with the clause 1(iv) of the Affordable Housing Policy 2013.

- d. That the respondent was faced with certain 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.

- e. 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 or moratorium shall be given in respect of that period also. 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 outbreak of COVID pandemic situation, 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.
- f. That the project is complete from all aspects but is unable to deliver possession and as such respondent has applied for occupation certificate on 08.12.2023 and has also fulfilled all the requirements for sourcing the same. 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. 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.

- g. 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. The clause 5 (iii) B of the policy is mentioned in this regard and completely mentioned in reply filed by respondent.
- h. That in compliance of the provision of clause 5(iii) of the Affordable Housing Policy 2013 and by the provision of the Act, 2016 the respondent issued multiple reminders & requests to the complainant to make the outstanding payment within 15 days failing which as per the policy and the clause 3.7 of the BBA. Since no payment was paid despite the issuance of a final reminder letter to make the outstanding payment the allotted unit of the complainant has already been cancelled and about this, a requisite public notice was published in the Hindi newspaper on 06.04.2024.
- i. All the other averments made in the complaint were denied in toto.
- j. 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 submission made by the parties.

F. Finding on objections raised by the respondent.

F.I Objection regarding force majeure conditions:

8. 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.
9. 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.

10. The complainant booked a flat in the project named as "Sixty-Three Golf Drive" and paid Rs. 22,77,720/- on different dates against the total sale consideration of Rs. 25,00,790/-. Buyer's agreement was not executed

between the parties only an allotment letter was issued by the respondent to the complainant on 11.01.2016. 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.

11. 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.
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. 85% 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 upto 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. Further, the Authority observes that the complainant has paid approximately 85% of the sale consideration but till date the buyers' agreement is not executed between

the parties. This constitutes a clear violation of Section 13 of the Act, 2016. Moreover, the Authority observes that the promoter undertook bulk cancellation in this project in one go even when it had failed to adhere to timeline for handing over of possession and the license of the promoter stood lapsed. 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 complainant(s) 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. 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.
16. While drafting 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.

17. **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."

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., 19.11.2024 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(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.”

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 allotment letter. 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 allotment letter 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*.
24. 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.

F. Directions of the authority

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



- i. The cancellation letter issued by the respondent to the complainant is hereby ordered to be set-aside with a direction for reinstatement of the subject unit and issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest i.e., 11.10% 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. 11.10% 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.
- iii. The respondent is directed to handover the possession of the allotted unit within 30 days after obtaining occupation certificate from competent Authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of the Act, 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 10th 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., 11.10% 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. 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.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

19.11.2024