

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

Date of decision: 08.10.2024

NAME OF THE BUILDER		M/s Sunrays Heights Pvt. Ltd.	
PROJECT NAME		"63 Golf Drive"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2772/2023	Priya Dwivedi V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani & Sachin Yadav
2.	CR/2770/2023	Puneet Dwivedi and prabha Dwivedi V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani & Sachin Yadav
3.	CR/2767/2023	Mamta Chauhan V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani & Sachin Yadav
4.	CR/2768/2023	Vanita Joshi V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani & Sachin Yadav

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

ORDER

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule

28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as “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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely 63 GOLF DRIVE”, Sector-63A, Gurugram being developed by the same respondent/promoter i.e., M/s Sunrays Heights Private Limited. The terms and conditions of the buyer’s agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	63 GOLF DRIVE Sector-63A, Gurugram
Nature of Project	Affordable group housing
DTCP License No. and validity	82 of 2014 dated 08.08.2014 Valid up to 31.12.2023
HRERA Registered	Registered Vide 249 of 2017 dated 26.09.2017 Valid up to 25.09.2022
Possession Clause	4.1 <i>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.</i> <i>*Note: As per affordable housing policy 2013 1(iv) All such projects shall be required to be necessarily completed within 4 years from the</i>

		<i>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 licence shall not be renewed beyond the said 4 years from the date of commencement of project.</i>				
Building Plan		10.03.2015				
Environmental Clearance		16.09.2016				
Due date of possession		16.03.2021 (Calculated from the date of environment clearance being later including grace period of 6 months in lieu of Covid-19)				
Occupation certificate		Not obtained				
1	2	3	4	5	6	7
S. no.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Date of cancellation through newspaper publication	Total sale consideration and amount paid	Relief sought
1.	CR/2772/2023 Priya Dwivedi V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- Not received	B-127 Admeasuring 605.10 sq.ft.	04.08.2018	06.04.2024	TC- Rs. 24,67,870/- AP- Rs. 23,33,158/-	1. Not to create third party. 2. DPC.
2.	CR/2770/2023 Puneet Dwivedi and Prabha Dwivedi V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- Not received	B-17 Admeasuring 605.10 sq.ft.	28.06.2018	06.04.2024	TC- Rs. 24,67,870/- AP- Rs. 23,32,816/-	1. Not to create third party. 2. DPC.
3.	CR/2767/2023 Mamta Chauhan V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- Not received	J-45 Admeasuring 361.89 sq.ft.	10.07.2018	06.04.2024	TC- Rs. 15,13,337/- AP- Rs. 15,13,337/-	1. Not to create third party. 2. DPC.
4.	CR/2768/2023 Vanita Joshi V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- Not received	E-12 Admeasuring 613.31 sq.ft.	18.10.2018	06.04.2024	TC- Rs. 25,00,790/- AP- Rs. 25,02,870/-	1. Not to create third party. 2. DPC.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TC	Total consideration
BSP	Basic sale price
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking delayed possession charges and not to create third-party rights.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/2772/2023 Priya Dwivedi Vs. M/s Sunrays Heights Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/2772/2023 Priya Dwivedi Vs. M/s Sunrays Heights Private Limited.

Sr. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable group housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	B-127
6.	Unit admeasuring	605.10 sq.ft
7.	Allotment Letter	NA
8.	Date of execution of Buyers agreement	04.08.2018
9.	Possession clause	<p>4.1 <i>The Developer shall endeavor 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.</i></p> <p><i>*Note: As per affordable housing policy 2013 1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.</i></p>
10.	Date of building plan	10.03.2015
11.	Date of environment clearance	16.09.2016
12.	Due date of possession	16.03.2021 (16.09.2020 plus six months in lieu of covid-19) (calculated from the date of environment clearance)

13.	Total sale consideration	Rs.24,67,870/- (as alleged by complainant)
14.	Amount paid by the complainant	Rs.22,33,158/- (as alleged by complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Cancellation through publication	06.04.2024 (as submitted by the respondent in his written submissions)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- That the complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing a residential unit with the respondent vide application bearing no. SGDB-5263 wherein the allotment through draw of lots was held on 06.01.2016 and the complainant was allotted unit no. B - 127, Block/Tower - B, having carpet area 605.10 sq. ft. @ Rs. 4000/- per Sq. Ft. (BSP) and balcony area of 94.94 sq. ft. @ Rs. 500/- per Sq. Ft.(BSP).
 - That the builder buyer agreement was executed on 04.08.2018 wherein the total sale consideration of Rs. 24,67,870/- of the said unit has been provided to the complainant.
 - That as per clause 4.1 of the builder buyers agreement read with "Affordable Housing Policy 2013" as amended up to date vide clause 5 (iii) (b), the possession of the unit has to be given within 4 years from the date of commencement of project on approval of building plans when allotment is made through draw of lots. Draw of units was made on 06.01.2016 against which allotment letter was issued. Twenty five percent i.e. 5% + 20% of the total cost of unit is to be paid at the time of allotment and remaining 75% of the total amount has to be paid in six equal half yearly instalments meaning thereby the possession of the

unit was supposed to be handed over maximum up to 10.01.2020 i.e. 4 years from 11.01.2016 when allotment letter after commencement of the project were issued.

- d. That the complainant has made a total payment of Rs.23,33,158/- as and when demanded by the respondent without any delay.
- e. That despite making payment of the requisite amount, the complainant has not been offered possession of the unit in question even till today and therefore, the complainant has approached the Authority and filed a complaint relating to issue handover the possession of said unit and along with delay of possession charges, by invoking the jurisdiction of the Authority under Section 18.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s)
 - a. Direct the respondent not to create any third party rights.
 - b. Direct the respondent to pay delayed possession charges till the actual handover of the unit in question.
10. The respondent/promoter put in appearance through its Advocate and marked attendance on 02.11.2023, 01.02.2024, 03.04.2024, 29.05.2024, 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.
11. The complainant and respondent have filed the written submissions on 13.08.2024 and 19.09.2024 (inadvertently mention 19.02.2024 in

proceeding dated 08.10.2024) 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

12. That thereafter the complainants, vide booking application applied to the respondent for allotment of the unit in the project and respondent allotted respective units against all the allottees 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 read with BBA dated 04.08.2018.
13. 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.

14. That as per clause 4.1 of the BBA, the due date of possession was subject to the allottees 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.
15. 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.

16. 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.
17. 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.

18. 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.
19. That in compliance of the provision of clause 5(iii) of the Affordable Housing Policy 2013 and by the provision of the RERA Act 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.
20. All the other averments made in the complaint were denied in toto.
21. 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.

E. Jurisdiction of the authority

22. 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

23. 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 with offices situated in Gurugram. 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

24. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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.

25. 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. Finding on objections raised by the respondent.

F.I Objection regarding force majeure conditions:

26. 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. 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.

27. 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 complainants

G.I Direct the respondent not to create any third party rights

G.II Direct the respondent to pay delayed possession charges/interest

28. The above-mentioned reliefs sought by the complainant(s) are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
29. The complainant booked a unit in the project named as "Sixty-Three Golf Drive" and paid Rs. 22,33,158/- on different dates against the total sale consideration of Rs. 24,67,870/-. On 04.08.2018 a BBA was executed between the parties. The possession of the unit was to be offered within 4 years from approval of building plans (10.03.2015) or from the date of environment clearance (16.09.2016), whichever is later. 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 06.09.2020 i.e., 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. Therefore, the due date of handing over possession comes out to be 16.03.2021.
30. 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.
31. Upon perusal of written submissions made by the complainant, it has been found that allotment of subject unit was cancelled by the respondent on 06.04.2024 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?”

32. The Authority notes that the complainant(s) 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 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. Moreover, the Authority observes that the promoter undertook bulk cancellation of the subject 4 unit 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 06.04.2024 is deemed invalid and is hereby quashed.

33. 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."

34. 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."

35. 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 favour 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.
36. 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.
37. 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.

38. **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."

39. 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.

40. 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., 08.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

41. 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;"*

42. 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.

43. 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.

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

possession plus 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

45. 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.

H. Directions of the authority

46. 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) of the Act:

- i. The cancellation letter issued by the respondent to the complainant(s) 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 60 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 allottees 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 complainants are 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.
45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

48. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
49. File be consigned to the registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 08.10.2024



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GURUGRAM