

**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/2771/2023	Mohinder Kumar V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
2.	CR/2769/2023	Kartikeya Kumar Das V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
3.	CR/2760/2023	Amit Kumar V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
4.	CR/2765/2022	Sonia Prasad V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
5.	CR/2764/2023	Ekta Kumar V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
6.	CR/2773/2023	Jaykrishna Yadav V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
7.	CR/2766/2023	Ashish Agarwal V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
8.	CR/2775/2023	Anil Kumar Yadav V/s	Sh. Sanjeev Kumar Sharma and

		M/s Sunrays Heights Private Limited	Sh. Tushar Behmani
9.	CR/2761/2023	Nishant Kumar Singh V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
10.	CR/2762/2023	Neetu Shekhawat V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
11.	CR/2763/2023	Ashish Yadav V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani
12.	CR/2778/2023	Swadesh Kumar Dwivedi V/s M/s Sunrays Heights Private Limited	Sh. Sanjeev Kumar Sharma and Sh. Tushar Behmani

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	<p>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></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</i></p>

	said 4 years from the date of commencement of project.					
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	Total sale consideration and amount paid	Relief sought
1.	CR/2771/2023 Mohinder Kumar V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- 29.05.2024	Unit J35, tower J admeasuring 361.89 sq.ft. [Page 33 of complaint]	04.02.2016	06.04.2024	TC- Rs. 14,83,480/ AP- Rs. 11,47,527/ (page 5-8 of supplementary document.	1. Not to create third party. 2. DPC.
2	CR/2769/2023 Kartikya Kumar Das V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- 29.05.2024	Unit F-68, tower J admeasuring 356.18 sq.ft. [Page 47 of reply]	04.02.2016	06.04.2024	TC- Rs. 14,59,640/ AP- Rs. 13,29,280/ (page 91 of reply)	1. Not to create third party. 2. DPC.
3.	CR/2760/2023 Amit Kumar Anand V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- 29.05.2024	Unit E-52 admeasuring 613.31 sq.ft. (page 37 of complaint)	21.10.2016	06.04.2024 (Page 10 of complain)	TC- Rs. 25,00,790/- AP- Rs. 22,78,418/- (page 62 of reply)	1. Not to create third party. DPC.



4.	CR/2765/2022 Sonia Prasad V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- 29.05.2024	F 102 Admeasuring 613.31 sq.ft. (page 34 of complaint)	03.02.201 6	06.04.2024	TC- Rs. 25,00,790/- AP- Rs. 22,92,165/- (page 62 of reply)	1. Not to create third party. 2. DPC.
5.	CR/2764/2022 Ekta Kumar V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- 29.05.2024	F 44 Admeasuring 366.18 sq.ft.	08.7.2019	06.04.2024	TC- Rs. 14,99,920/- AP- Rs. 12,15,952/- (page 63 of reply)	1. Not to create third party. 2. DPC.
6.	CR/2773/2023 Jaykrishna Yadav V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- 29.05.2024	F 84 Admeasuring 366.18 sq.ft.	17.07.201 9	06.04.2024	TC- Rs. 14,99,920/- AP- Rs. 14,18,444/- (page 63 of reply)	1. Not to create third party. 2. DPC.
7.	CR/2766/2023 Ashish Agarwal V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- 29.05.2024	C-26 Admeasuring 604.83 sq.ft.	30.05.201 8	06.04.2024	TC- Rs. 24,66,870/- AP- Rs. 23,32,205/- (page 63 of reply)	1. Not to create third party. 2. DPC.
8.	CR/2775/2023 Anil kumar Yadav V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- 29.05.2024	C-51 Admeasuring 356.18 sq.ft.	13.09.201 8	06.04.2024	TC- Rs. 14,59,640/- AP- Rs. 13,80,371/- (page 63 of reply)	1. Not to create third party. 2. DPC.



9.	CR/2761/2023 Nishant Kumar Singh V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- 29.05.2024	F-107 Admeasuring 613.31 sq.ft.	15.06.201 8	06.04.2024	TC- Rs. 25,00,790/- AP- Rs. 23,64,263/- (page 63 of reply)	1. Not to create third party. 2. DPC.
10.	CR/2762/2023 Neetu Shekhawat V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- 29.05.2024	A-111 Admeasuring 356.18 sq.ft.	01.10.201 8.	06.04.2024	TC- Rs. 14,59,640/- AP- Rs. 14,40,404/- (page 63 of reply)	1. Not to create third party. 2. DPC.
11.	CR/2763/2023 Ashish Yadav V/s M/s Sunrays Heights Private Limited DOF- 27.06.2023 Reply- 29.05.2024	E-48 Admeasuring 356.18 sq.ft.	15.10.201 6	06.04.2024	TC- Rs. 14,60,640/- AP- Rs. 13,33,537/- (page 58 of reply)	1. Not to create third party. 2. DPC.
12.	CR/2778/2023 Swadesh Kumar Dwivedi V/s M/s Sunrays Heights Private Limited DOF- 26.06.2023 Reply- 29.05.2024	F-23 Admeasuring 613.31 sq.ft.	04.04.201 6	06.04.2024	TC- Rs. 25,00,790/- AP- Rs. 22,77,314/-	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/2771/2023 Mohinder Kumar 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/2771/2023 Mohinder Kumar 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.	J-35, tower-J
6.	Unit admeasuring	361.89 sq. ft. (carpet area) 69.84 sq. ft. (balcony area)
7.	Allotment Letter	11.01.2016
8.	Date of execution of Buyers agreement	04.02.2016
9.	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> *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.
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.14,83,480/- (as per SOA dated 14.03.2024 page 4 of supplementary documents filed by complainant)



14.	Amount paid by the complainant	Rs.11,47,527/- (as per SOA dated 14.03.2024 page 4 of supplementary documents filed by complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Cancellation through publication	06.04.2024 (page 56 of reply)

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 dated 14.04.2015 wherein the allotment through draw of lots was held on 06.01.2016 and the complainant was allotted unit no. J - 35, Block/Tower - J, having carpet area 631.89 sq. ft. @ Rs. 4000/- per Sq. Ft. (BSP) and balcony area of 69.84 sq. ft. @ Rs. 500/- per Sq. Ft. (BSP). The provisional allotment letter was issued on 11.01.2016 to the complainant /allottee regarding allotment of residential flat in project "63 Golf Drive", Sector 63 A, Gurugram Haryana.
 - That the builder buyer agreement was executed on 04.02.2016 wherein the total sale consideration of Rs. 14,82,355/- 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 dated 11.01.2016 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 upto 10th January 2020 i.e. 4 years from 11th January 2016 when allotment letter after commencement of the project were issued.

- d. That the complainant has made a total payment of Rs. 11,47,527/- 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. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent contested the complaint on the following grounds:
 - a. That at the very outset, the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.



- b. That the complainant has not come before the Authority with clean hands and has suppressed vital and material facts from the Authority.
- c. That the complainant approached the respondent and expressed interest in booking an apartment in the affordable housing developed group housing developed by the respondent known as "63 Golf Drive" situated in Sector 63, Gurugram Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- d. That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. J-35, Tower J, Type A admeasuring carpet area of 631.89 sq. ft. (approx.) and balcony area of 94.84 sq. ft. (approx.) was provisionally allotted vide allotment letter dated 11.01.2016. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor.
- e. Thereafter, an agreement to sell was executed in 2016 between the parties. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- f. That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. Being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants



incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That as per clause 4.1 of the agreement the respondent endeavored to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance, whichever is later. That it is also pertinent to note that the possession clause of the agreement is with par with the clause 1(iv) of the Affordable Housing Policy 2013.

- g. That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. That it is pertinent to mentioned herein that the Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25.03.2020, on account of unprecedented conditions due to the outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- h. That the respondent was faced with certain other *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of



sand/gravel exponentially. It was almost for 2 years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the project continued without shifting any extra burden to the customer. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

- i. That additionally, even before normalcy could resume, the world was hit by the Covid-19 pandemic. The Covid-19 pandemic resulted in serious challenges to the project with no available laborers, contractors, etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana, have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of the Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. During the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. On the same principle, the Haryana Real Estate



Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide order/direction dated 26.05.2020 on account of 1st wave of COVID-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

- j. That as per license condition developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time bound project under section 7B of The Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal group housing project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. Section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure. Therefore, it is safely concluded that the said delay of 422 days in the seamless execution of the project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and the 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.

- k. That in a similar case where such orders were brought before the Authority was in the **Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP"** which was decided on 17.05.2022, wherein the Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent builder.
- l. That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provide a benefit of 6 months to the developer on account of the effect of COVID.
- m. That the respondent has applied for an occupation certificate on 08.12.2023. Once an application for the grant of an 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. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the



computation of the period utilized for the implementation and development of the project.

- n. 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.
- o. That the complainant has failed to make any payment of the installment due at "*within 36 months from the due date of Allotment*" along with partial payments towards previous installments. In accordance with the same, it is submitted that the complainant, cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments as stated above. The non-payment by the complainant severally affected the construction of the project and funds of the respondent. Due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount. The respondent reserves its right for claim of damages before the appropriate forum.
- p. That in compliance with the above-mentioned provision 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. The respondent further sent a letter dated 12.04.2024 to the complainant requesting to remit the outstanding amount.
- q. That since the respondent has duly complied with the statutory requisites and the project is nearly completed and occupation certificate has already been applied, there is no unwarranted delay in completion of the project.



- r. That the complainant has hopelessly delayed in making the payment of the balance installment to the respondent and hence the unit of the complainant is liable to be canceled in terms of clause 5(iii) i affordable housing policy and the clause 3.7 of the BBA.
- s. That it is clearly evident that the complainant despite all the reminders failed to make payment against the instalment. That the respondent earnestly requested the complainant to make payment. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant.
- t. That the complainant has not only in breach of the buyer's agreement but also in breach of the Affordable Housing Policy and the RERA Act, by failing to make the due payments of installments. The complainant is responsible for all the consequences of breach of the buyer's agreement and violation of RERA.
- u. That the complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- v. That in light of the *bona fide* conduct of the respondent, the fact that no delay has been caused to the complainant. The non-existence of cause of action this complaint is bound to be dismissed with costs in favour of the respondent. Without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of



the outstanding installment from the due date of installment along with the interest at the rate of 15%.

- w. That moreover, without accepting the contents of the complaint in any manner whatsoever, and 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 has to be calculated only on the amounts deposited by the allottees/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 allottees/complainants towards delayed payment charges or any taxes/statutory payments, etc.
- x. That in light of the bona fide conduct of the respondent and no delay for development of project as the respondent was severely affected by the force majeure circumstances and no cause of action to file the present complaint this complaint is bound be dismissed in favor of the respondent.
12. All the other averments made in the complaint were denied in toto.
13. 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 complainants.

E. Jurisdiction of the authority

14. 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

15. 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

16. 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.

17. 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:

18. 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.

19. 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

20. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
21. The complainant booked a unit in the project named as "Sixty-Three Golf Drive" and paid Rs. 11,47,527/- on different dates against the total sale consideration of Rs. 14,83,480/-. On 04.02.2016 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.

22. 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.
23. 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?"
24. 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 12 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.

25. 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."

26. 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.."

27. 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.

28. 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.
29. 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.

30. **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.”*

31. 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.
32. 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%.
33. The definition of term ‘interest’ as defined under section 2(z a) 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;”*

34. 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.
35. 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.

36. 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*.
37. 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

38. 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 of the allotted unit issued by the respondent to the complainant(s) is hereby ordered to be set-aside with a direction for reinstate 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.
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
41. 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