

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

**Date of filing of complaint:** 13.06.2023  
**Date of first hearing:** 15.11.2023  
**Date of decision:** 05.03.2025

NAME OF THE BUILDER		SUNRAYS HEIGHTS PRIVATE LIMITED	
PROJECT NAME		"63 Golf Drive" at sector 63A, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/2423/2023	Vishal Gupta Vs. Sunrays Heights Private Limited	Shri Rajan Kumar Hans and Shri Sajal Dhawan  Shri Harshit Batra
2.	CR/2424/2023	Kamal Kant Gupta Vs. Sunrays Heights Private Limited	Shri Rajan Kumar Hans and Shri Sajal Dhawan  Shri Harshit Batra
3.	CR/2425/2023	Vikas Gupta Vs. Sunrays Heights Private Limited	Shri Rajan Kumar Hans and Shri Sajal Dhawan  Shri Harshit Batra

**CORAM:**

Shri Ashok Sangwan

**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.

2. 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, "Sixty-Three Golf Drive" situated at Sector-63 A, Gurugram being developed by the same respondent/promoter i.e., Sunrays Heights Private Limited. The terms and conditions of the buyer's agreements and the fulcrum of the issue involved in all these cases pertain 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.
3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

<b>Project Name and Location</b>	<b>"63 Golf Drive" at Sector - 63A, Gurugram, Haryana</b>
<b>Project area</b>	9.7015625 acres
<b>DTCP License No. and validity</b>	82 of 2014 dated 08.08.2014 Valid up to 31.12.2023
<b>RERA Registered or Not Registered</b>	Registered Registration no. 249 of 2017 dated 26.09.2017 valid up to 25.09.2022
<b>Date of approval of building plans</b>	10.03.2015
<b>Date of environment clearance</b>	16.09.2016
<b>Possession Clause</b>	<p><b>4. Possession</b></p> <p><i>"4.1 The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of the project, subject to force majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms stipulated in the present agreement."</i></p> <p><b>(Emphasis supplied)</b></p> <p><b>*As per affordable housing policy 2013</b></p> <p><i>"1(iv) All such projects shall be required to be necessarily completed within 4 years from the</i></p>



	<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 license shall not be renewed beyond the said 4 years from the date of commencement of project."</i>
<b>Due date of possession</b>	<b>16.03.2021</b> (Calculated from the date of environment clearance being later including grace period of 6 months in lieu of Covid-19)
<b>Occupation certificate</b>	<b>Not Obtained</b>

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession	Relief sought
1.	CR/2423/2023  Vishal Gupta Vs. Sunrays Heights Pvt. Ltd.  DOF: 13.06.2023 Reply: 28.08.2024	108, Block J  Carpet area- 356.18 sq. ft.  Balcony area- 69.84 sq. ft.	11.01.2016	BSP-Rs. 14,59,640/-  AP-Rs. 13,29,280/-	Not Offered  *Cancelled on 22.04.2024 post publication in newspaper on 06.04.2024	<ul style="list-style-type: none"> <li>DPC</li> <li>Complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage and electricity.</li> </ul>
2.	CR/2424/2023  Kamal Kant Gupta Vs. Sunrays Heights Pvt. Ltd.  DOF: 13.06.2023 Reply: 28.08.2024	121, Block B  Carpet area- 356.18 sq. ft.  Balcony area- 69.84 sq. ft.	11.01.2016	BSP-Rs. 14,59,640/-  AP-Rs. 13,29,280/-	Not Offered  *Cancelled on 22.04.2024 post publication in newspaper on 06.04.2024	<ul style="list-style-type: none"> <li>DPC</li> <li>Complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage and electricity.</li> </ul>

3.	CR/2425/2023  Vikas Gupta Vs. Sunrays Heights Pvt. Ltd.  DOF: 13.06.2023 Reply: 28.08.2024	28, Block B  Carpet area- 356.18 sq. ft.  Balcony area- 69.84 sq. ft.	11.01.2016	BSP-Rs. 14,59,640/-  AP-Rs. 13,29,280/-	Not Offered  *Cancelled on 22.04.2024 post publication in newspaper on 06.04.2024	<ul style="list-style-type: none"> <li>• DPC</li> <li>• Complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage and electricity.</li> </ul>
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**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s
CD	Conveyance deed

- 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 the delayed possession charges and further directions to the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage and electricity..
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the 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.
- 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/2423/2023 titled as "Vishal Gupta Vs. 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/2423/2023 titled as "Vishal Gupta Vs. Sunrays Heights Private Ltd."**

Sr. No.	Particulars	Details
1.	Name of the project	"63 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.	Unit no. 108, Block J (Demand notice at page 55 of complaint)
6.	Unit admeasuring	356.18 sq. ft. (carpet area) 69.84(balcony area) (Demand notice at page 55 of complaint)
7.	Application Form	Undated (Complainant claims to have paid Rs.75,000/- towards booking of unit on 15.01.2015) (page 17 of complaint)
8.	Provisional Allotment Letter- cum-demand letter	11.01.2016 (page 41 of complaint)
9.	Date of execution of Buyers agreement	11.01.2016 (As submitted by counsel for the complainant during proceedings dated 05.02.2025)
10.	Possession clause	<b>4. POSSESSION</b> "4.1 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 the project, subject to force majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms stipulated in the present agreement." <b>*As per affordable housing policy 2013</b> "1(iv) All such projects shall be required to be necessarily completed within 4 years from the

		<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 license shall not be renewed beyond the said 4 years from the date of commencement of project."</i>
11.	Date of building plan	10.03.2015 (Page 31 of reply)
12.	Date of environment clearance	16.09.2016 (Page 37 of reply)
13.	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)
14.	Basic sale consideration	Rs.14,59,640/- (page 56 of complaint)
15.	Amount paid by the complainant	Rs.13,29,280/- (As per payment Plan Detail Report dated 20.08.2024 at page 55 of reply) (Rs.11,32,227/- As per demand notice dated 27.04.2022 at page 56 of complaint and Rs. 1,97,053/- as per receipt dated 10.05.2022 at page 57 of the complaint)
16.	Occupation certificate	Not obtained (Respondent applied for grant of occupation certificate on 08.12.2023, as submitted at page 48 of reply)
17.	Offer of possession	Not offered
18.	Reminder Letters	14.03.2024, 29.03.2024 and 12.04.2024 (Page 49 to 52 of reply, respectively)
19.	Publication of cancellation made in newspaper	06.04.2024 (Page 53 of reply)
20.	Cancellation letter	22.04.2024 (Page 54 of reply)

**B. Facts of the complaint**

8. The complainant has made following submissions in the complaint:
- a) That in 2015, the complainant got information about an advertisement in a local newspaper about affordable housing project "63 Golf Drive" at Sector 63-A, Gurugram, Haryana. The complainant visited the project site and met with local staff of respondents who gave an application form and assured him

that possession will be delivered within 36 months as they were told that it is a govt. project having fixed payment of instalment every 6 months and on the last instalment, the possession would be delivered.

- b) That the unit in question is J108 in Tower J, admeasuring 356.18 sq. ft. and 69.84 sq. ft. balcony area, in the project "63 Golf Drive". The complainant got the unit in the draw of lots and had remitted Rs 75,000/- on 15.01.2015 towards booking the unit along with application form no. 0865. The said payment was duly acknowledged in the application form.
- c) That on 11.01.2016, the respondent issued a provisional allotment letter cum demand letter against the allotted unit. The unit was purchased under the time link payment plan as per the mandate under Affordable Housing Policy 2013 for sale consideration of Rs. 14,59,640/-.
- d) That a pre-printed one sided, arbitrary and unilateral buyer's agreement was executed between the parties. As per clause 4.1 of the said agreement, the respondent had to complete the construction of the unit and handover the possession within 4 years from the date of commencement of project.
- e) That as per Rule 1(iv) under the Affordable Housing Policy 2013, notified by DTCP, Govt. of Haryana on date 19.08.2013 in the Haryana Government Gazette, the possession is necessarily to be given in 4 years from the approval of building plans or grant of environmental clearance, whichever is later. The building plans were approved on 10.03.2015 and environmental clearance was granted on 29.09.2016. Therefore, the due date of possession becomes on or before 29.09.2020.
- f) That till date the complainant had paid Rs.13,29,280/- i.e., 91% of the amount demanded by the respondent. The last instalment was paid on 10.05.2022 and it is expected that the respondent would take around 1-2 years more for the completion of the project.

- g) That the main grievance of the complainant is that despite paying 91% of the actual amounts of unit, the respondent has failed to deliver the possession of unit which was a core promise of Affordable Housing Policy, 2013.
- h) That the complainant purchased the unit with the intention that after purchase, her family will use it for their personal use. The instalment accrues every 6 months after the commencement of construction work, and the respondent was under obligation to deliver the project complete in all respects as and when the respondent takes the last instalment or maximum by 29.09.2020.
- i) That the respondent applied for grant of license to the DTCP and license was obtained on 08.08.2014 for 5 years i.e. till 07.08.2019 and the respondent, while obtaining the license promised to handover the possession to allottees within 4 years from the date of sanction of building plans or from the date of environmental clearance i.e. by 29.09.2016 and upon the expiry of the license granted to respondent by the DTCP Haryana, they should have initiated a Suo moto action against the respondent to ensure the timely handover of the project and to safeguard the interest of the homebuyers, but DTCP has omitted to take any action against the respondent.
- j) That as per section 18 of the RERA Act. 2016, the promoter is liable to pay interest at the prescribed rate of interest and compensation to the allottees of an apartment building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- k) That the cause of action to file the present complaint arose on 15.01.2015, when the complainant paid Rs. 75,000/- as booking amount and on 11.01.2016 when provisional allotment letter was issued by the respondent further when a one sided, arbitrary and unilateral buyer's agreement was executed between the parties and on 29.09.2020, when the respondent failed



to hand over the possession of the unit as per the buyer's agreement and further cause of action again arose on 10.05.2022 when the complainant paid the last installment. Further the cause of action arose on various occasions when the protests were lodged with the respondent about their failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

**C. Relief sought by the complainant**

9. The complainant has sought the following relief(s):
  - I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest- Rs.11,853/- per month of delay @ 10.70% p.a. simple rate of interest.
  - II. Direct the respondent to complete and seek necessary governmental clearances regarding infrastructure and other facilities including road, water, sewerage, electricity, environment etc. before handing over the physical possession of the units.
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 has contested the complaint on the following grounds.
  - a) That the complainant applied to the respondent for allotment of the unit vide an application form was allotted a unit bearing no. J-108 in Tower J having carpet area of 356.18 sq. ft. and balcony area of 69.84 sq. ft. together vide allotment letter dated 11.01.2016. Thereafter, a builder buyer agreement was executed between the parties.
  - b) 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. That being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of the allottee as well as

the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect.

- c) 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. The possession clause of the agreement is on par with clause 1(iv) of the Affordable Housing Policy, 2013.
- d) That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance 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. The Ld. 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 23.03.2020, on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- e) That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. The construction and development of the project was deeply affected by circumstances which are beyond the control of the respondent. The respondent faced 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 (Two) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made, and materials were procured at 3-4 times the rate and the construction of the Project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts. 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.

- f) 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 (EC) since they fall in the category of special time bound project under Section 7B of the Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal Group Housing Project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of Project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also.
- g) That in a similar case where such orders were brought before the Ld. Authority was in 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 Hon'ble 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.

- h) That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of the effect of COVID also.
- i) That the Hon'ble UP REAT at Lucknow while deciding appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021 has also granted the extension of 116 days to the promoter on account of delay in completion of construction on account of restriction/ban imposed by the Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- j) That Karnataka RERA vide notification No. K-RERA/Secy/04/2019-20 and No. RERA/SEC/CR-04/2019-20 has also granted 9 months extension in lieu of Covid-19 pandemic. Moreover, this Ld. Authority had in similar matters of the had allowed the benefit of covid grace period of 6 months in a no. of cases.
- k) Despite there being several defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. Despite the default caused, the respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the

project. The respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.

- l) That the respondent has applied for occupation certificate on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the statutory authority concerned, 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. Therefore, the time utilized by the statutory authority to grant occupation certificate to the respondent is required to be excluded from computation of the time utilized for implementation and development of the project.
- m) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which under clause 5(iii)(b), 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 of the duty to make timely payment of the installments. Not only as per the Policy, but the complainant was also under the obligation to make timely payment of installments as agreed as per the BBA.
- n) That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" due in April 2019 along with partial payments towards previous installments. The complainant cannot rightly contend under the law that the alleged period of delay continued even after the non-payment and delay in making the payments. The non-payment by the complainant affected the construction of the project and funds of the respondent. That 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 the right to claim damages before the appropriate forum.

- o) That it is the obligation of the complainant under the Affordable Housing Policy, 2013 (as on the date of Allotment) and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013.
- p) That the respondent issued a reminder letter dated 15.03.2024 and 12.04.2024 requesting the complainant to pay the outstanding dues. That in complete default the complainant failed to make the payment within 15 days and thus, the respondent also made a publication in the Hindi newspaper on 06.04.2024. Thus, the unit of the complainant is liable to be cancelled in terms of clause 5(iii)(i) of the Policy and clause 3.7 of the buyer's agreement. The complainant failed to make the complete payment which led to the issuance of the cancellation letter dated 22.04.2024.
- q) That this Hon'ble Authority has adjudicated similar issues of termination/cancellation and has upheld the same noting the default on part of the Complainant. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.
- r) 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 for installments. The unit has been cancelled, and this complaint is bound be dismissed in favor of the respondent.
- s) 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 instalment till the date of realization of amount. Further delayed interest if any must be calculated only on the

amounts deposited by the complainant towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the complainant towards delayed payment charges or any taxes/statutory payments, etc.

12. 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 on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

13. 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**

14. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

15. 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) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the*

*common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

16. 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 complainant at a later stage.

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

**F.I Objection regarding delay due to force majeure circumstances.**

17. It is contended on behalf of respondent that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in delays such as various orders passed by NGT and Hon'ble Supreme Court. All the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay as it is a well-settled principle that a person cannot take benefit of his own wrong.

18. It is observed that the respondent was liable to complete the construction of the project, and the possession of the said unit was to be handed over by 16.09.2020 and is claiming benefit of lockdown amid covid-19. In view of notification no. 9/3-2020 dated 26.05.2020, the Authority has allowed six months relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 16.09.2020 + 6 months, possession was



to be handed over by 16.03.2021, but the respondent has failed to handover possession even within this extended period. Moreover, the occupation certificate/part OC is not yet obtained by the respondent from the competent Authority.

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

**G.I Direct the respondent to pay interest for every month of delay at the prevailing rate of interest- Rs.11,853/- per month of delay at the rate of 10.70% p.a. simple rate of interest.**

**G.II Direct the respondent to complete and seek necessary governmental clearances regarding infrastructure and other facilities including road, water, sewerage, electricity, environment etc. before handing over the physical possession of the units.**

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

20. The factual matrix of the case reveals that the complainant booked a unit in the affordable group housing colony project of the respondent known as "63 Golf Drive" situated at sector 63-A, Gurugram, Haryana and was allotted unit no. 108, in tower J for a sale consideration of Rs.14,59,640/-. The builder buyer agreement was executed between the parties on 11.01.2016. 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 which comes out to be 16.09.2020. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-

- 19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over the possession comes out to be 16.03.2021.
21. The complainant is always ready and willing to retain the allotted unit in question and has paid a sum of Rs.13,29,280/- towards the allotted unit. On the other hand, the respondent cancelled the unit allotted to the complainant on 22.04.2024 after sending a final reminder letter dated 12.04.2024 stating non-payment of last instalment as the ground for cancellation. In line with the aforesaid facts and documents placed on record by both the parties, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
22. The Authority notes that the respondent issued a letter dated 12.04.2024, instructing the complainant to process the payment of the outstanding amount against the allotted unit. However, the Authority notes that this letter did not specify any amount to be paid by the complainant.
23. Based on the documents presented, it is evident that the respondent's actions demonstrate malafide intent. The respondent issued a payment request without specifying the required amount and cancelled the unit despite the complainant's clear willingness to pay and continue with the project, as evident from the complaint wherein the complainant is seeking possession of the unit allotted to him.
24. Additionally, 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. The respondent acted in bad faith, as it failed to provide a specific payment amount to be paid by the complainant and adjust the delay period interest. In light of these findings, the cancellation of the allotment on 22.04.2024 is deemed invalid and is hereby quashed as issued in bad faith.

25. Further, the complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to 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 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 favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

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.

29. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

***“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***  
*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”*

30. 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, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.

31. 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., 05.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

32. 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—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.

34. 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 a 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 the outbreak of Covid-19. As such the due date for handing over of possession comes out to be 16.03.2021.

35. 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 the prescribed rate of interest i.e., @ 11.10% p.a. w.e.f. 16.03.2021 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority,

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


36. 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 hand over 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**

37. 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. Cancellation is set aside and the respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay from the due date of possession 16.03.2021 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
  - II. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per Rule 16(2) of the Rules, *ibid*.
  - III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- IV. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants with respect to obligation conferred upon them under Section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupation certificate.
- V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- VI. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
40. Files be consigned to the registry.

**Dated: 05.03.2025**

  
**Ashok Sangwan**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram