

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

Complaint no.: 4527 of 2024
Complaint filed on: 16.09.2024
Date of order: 16.07.2025

Parveen Lathwal

R/o- House no. 850, Sector 15, Sonipat,
Haryana- 131001
Jangpura, South Delhi -14

Complainant

Versus

Sunrays Heights Private Limited

Registered Office: 211, 2nd Floor,
Ansal Bhawan, 16 Kasturba Gandhi
Marg, New Delhi 110001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Shailender Bahl (Advocate)

Complainant

Sh. Harsh Jain (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details.

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

S.No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 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.	C83, Tower C (page 32 of complaint)
6.	Unit admeasuring	605.10 sq. ft. (carpet area) 94.94 sq. ft. (balcony area) (page 32 of complaint)
7.	Allotment Letter	22.06.2017 (page 32 of complaint)
8.	Date of execution of Buyers agreement	19.04.2016 (page no. 34 of complaint)
9.	Possession clause	<p>4.1 <i>The Developer shall endeavor to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i> (page 37 of complaint)</p> <p>*Note: As per affordable housing policy 2013 <i>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years from the date of commencement of project.</i></p>



10.	Date of building plan	10.03.2015 (taken from another file CR/2814/2021 decided on 30.11.2023 of same project)
11.	Date of environment clearance	16.09.2016 (taken from another file CR/5238/2022 of same project)
12.	Due date of possession	16.03.2021 (Calculated from date of environment clearance i.e., 16.09.2016 being later, which comes out to be 16.09.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)
13.	Basic sale price	Rs.24,67,870/- (as per BBA at page 47 of complaint)
14.	Amount paid by the complainant	Rs.22,52,380 /- (as per SOA at page 69 of reply)
15.	Final reminder	09.08.2024 (page 66 of reply)
16.	Occupation certificate	31.12.2024 (as available on other files of same project)
17.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- a) That the complainant has purchased/booked one residential unit bearing no. 83, tower- C, in said project of the respondent, having covered area approximately 605.10 sq. ft. @ Rs.4,000/- sq. ft., and balcony area 94.94 sq. ft. @ Rs.500/- per sq. ft. amounting to Rs. 24,67,840/-.
- b) That the respondent had paid Rs. 1,20,000/- as earnest money/Instalment No. 1 on application for allotment bearing no. SGD(B)-1437 (preprinted), as per demand raised by respondent, vide cheque no. 672342 dated 25.01.2015 which has been acknowledged by respondent in application form itself, and in lieu of which respondent has issued provisional allotment letter with customer ID : 63GD/SGD/2A/C83 dated 22.06.2017. A builder buyer agreement was also executed between



parties on 19.04.2016, (date as per stamp paper as no date was mentioned on agreement).

- c) That till date the complainant has deposited total amount of Rs. 22,52,284/- (approx. 91.26% of total sale consideration) in favour of respondent and same was duly received by the respondent, on different occasions as and when demanded by them in terms of construction linked plan as opted by complainant and admitted by respondent.
- d) That as per the clause 4.1(a) of the agreement the construction of unit was likely to be completed within a period of forty eight months of commencement of project, subject to force majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in agreement. It is already a known fact that the earnest money was taken on 25.01.2015 and that time the construction of said tower was started and the time span to hand over the physical possession comes to its expiration in 48 months which got exhausted/expired in January, 2019 and yet the respondent kept on sending the complainant fiscal reminders and demand notices whereas the respondent has not fulfilled their word and commitment and are now defaulter as per the agreement.
- e) That the physical possession of booked unit has not given neither offered to the complainant till date even after their repeated various visits and telephonic calls and the complainant has not been given satisfactory reply, as such the complainant requested the respondent verbally many times for handing over the above said unit which is an obligation of the promoter under section 11(4)(a), of the Act, *ibid*, however, the respondent have been lingering on the matter on one pretext or the other in its own way without bothering the rules and regulations which has been passed by the Apex Court of India for the builder and developers.



- f) That as the completion of the project was not as per the timelines/Payment Plan, no occasion arose for the further payments, despite the fact that further payments never became due.
- g) That as per section 19(6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of its terms of the agreement.
- h) That seeing the conduct and malafide intentions of the respondent, the complainant finding no alternative got visited in the office of respondent company whereby calling upon the respondent company to provide status of project as per payment received yet and final date when possession of the said unit gets handed over to them, but respondent has not replied till date. However, the respondent in its audacity got issued final reminder notice to clear the long due outstanding amount against unit No. C-83, the allotted Apartment, allotted under Affordable Housing Policy 2013, which has been replied by complainant vide reply letter dated 20.08.2024 was reverted by complainant even after receipt of the reply respondent failed to comply with the requirements Buyer's agreement, hence the respondent company has provided deficient services to the complainant and has been found indulged in unfair trade practice.
- i) That such an inordinate delay in the delivery of possession to the Complainant is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between complainant and respondent. The complainant thereby demands possession of the unit along with interest for every month of delay, till the handing over of the possession by the respondent to the complainant in

terms of Section 18(1) read with Section 18(3) of the Act, along with principles of justice, equity and good conscience.

- j) That in furtherance and without prejudice to the ground mentioned herein above, humbly prayed that the rate of interest should be as per the HRERA rules i.e. MCLR + 2%.
- k) That Hon'ble Authority has already passed various judgements under Section 37 of the Act, in same project against respondent wherein directions for delay possession charges are granted at the prescribed rate of interest @ 10.85% every month of delay from the date of possession. Further, the present complainant relies on complaint no. 476 of 2022, 1244 of 2022, etc.

C. Relief sought by the complainant

4. The complainant has sought following relief(s):

- I. Direct the respondent to handover possession of unit category Type 2A, bearing no. 83, in Block/Tower C, having carpet area 605.10, Balcony Area 94.94 Square Feet, in Group Housing Colony/Project named as "63 Golf Drive" situated in Sector-63 A, Gurugram, in a completely finished and habitable form with all the amenities as per specifications provided in the sales brochure, buyer's agreement of the project, after receiving occupation certificate along with interest for delay possession i.e. 10.85% i.e. MCLR + 2% per annum as per HRERA Rules, 2017.
 - II. The respondent shall reduce outstanding amount in its original form without charging interest if any and not charge anything from the complainant which is not part of the buyer's agreement.
 - III. Award a cost of Rs.1,00,000/- towards litigation expenses in favor of the complainant and against the opposite party.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. 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. C-83 in tower C, having carpet area of 605.10 sq. ft. and balcony area of 94.94 sq. ft. vide allotment letter dated 22.06.2017. The complainant represented to the respondent that they should remit every instalment on time as per the payment plan.
- b) Thereafter, a builder buyer agreement was executed between the parties. The agreement was consciously and voluntarily executed between the parties and terms and conditions of the same are binding on the parties.
- c) 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.
- d) That, as per clause 4.1 of the agreement, the respondent endeavoured 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.
- e) 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 25.03.2020, 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.

- f) 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 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 and Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab and Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 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. 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 labourers, contractors etc. for the construction.

- g) 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, 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 NGT or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period.
- h) 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.



- i) That the respondent has applied for occupation certificate on 08.12.2023.

Once an application for grant of occupation certificate is submitted for approval in the office of the 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.

- j) 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 instalments. The complainant is liable to make the payment of the instalments 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 instalments. Not only as per the Policy, but the complainant was also under the obligation to make timely payment of instalments as agreed as per the BBA.

- k) That the complainant has failed to make any payment of instalment at "within 36 months from the due date of Allotment" due on April 2019 along with partial payment towards previous instalments. 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.

- l) 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.
- m) That the respondent issued a final reminder letter dated 09.08.2024 requesting the complainant to pay the outstanding dues. In complete default, the complainant failed to make the payment in 15 days. 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 respondent on 06.04.2024 through publication gave another 15 days to clear the outstanding dues and get the allotment reinstated.
- n) That without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of outstanding instalment from due date of instalment along with interest @15% p.a.
- o) 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.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority.

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

10. 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

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

Section 11(4)(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.

12. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objection raised by the respondent.

F.I Objection regarding force majeure conditions.

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as construction ban, orders passed by various Authorities including orders passed by National Green Tribunal (hereinafter, referred as NGT), lockdown due to outbreak of Covid-19 pandemic.
14. The Authority, after careful consideration, finds that in the present case, the project falls under the Affordable Housing Policy, 2013, which contains specific stipulations regarding the completion of the project. As per Clause 1(iv) of the said Policy:

"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the 'date of commencement of project' for the purpose of this policy. The licenses shall not be renewed beyond the said 4-year period from the date of commencement of project."

15. The respondent/promoter, having applied for the license under the Affordable Housing Policy, was fully aware of these terms and is bound by them. The Authority notes that the construction ban cited by the respondent, was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent being a promoter, should have accounted for it during project planning. Hence, all the pleas advanced in this regard are devoid of merits.
16. In accordance with the said policy the respondent was obligated to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of the building plan is 10.03.2015 and environment clearance is 16.09.2016. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit 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/due 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 for 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 pandemic. So, in such case the due date for handing over of possession comes out to 16.03.2021.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to handover possession of unit category Type 2A, bearing no. 83, in Block/Tower C, having carpet area 605.10, Balcony**

Area 94.94 Square Feet, in Group Housing Colony/Project named as "63 Golf Drive" situated in Sector-63 A, Gurugram, in a completely finished and habitable form with all the amenities as per specifications provided in the sales brochure, buyer's agreement of the project, after receiving occupation certificate along with interest for delay possession i.e. 10.85% i.e. MCLR + 2% per annum as per HRERA Rules, 2017.

17. The complainant was allotted unit no. C-83, Tower-C admeasuring carpet area of 605.10 sq. ft. and a balcony area of 94.94 sq. ft., in the respondent's project at basic sale price of Rs.24,67,870/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 19.04.2016. 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 calculated from the date of environment clearance being 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., 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. Therefore, the due date of handing over possession comes out to be 16.03.2021. The complainant paid a sum of Rs.22,52,380/- towards the subject unit.
18. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

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

"4-Possession

4.1 The Developer shall endeavour to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement."

20. 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.

21. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which



would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. 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.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate. However, 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."

23. 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.
24. 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., 16.07.2025

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

25. 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;"***

26. 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.
27. 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 not given, so the date is taken from another file of the same project i.e., 16.09.2016. The date of environment clearance being later, the due date of handing over of possession is reckoned from the date of environment clearance. Therefore, the due date of handing over of possession comes out to be 16.09.2020. Further as elaborated above 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 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.

28. 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 offer of possession plus 2 months or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
29. Herein, it is important to note that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 31.12.2024. Section 17(1) of the Act of 2016 obligates the respondent-promoter to handover the physical possession of the subject unit to the



complainant complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.

30. In view of the above, the respondent is obligated to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.

31. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

G.II The respondent shall reduce outstanding amount in its original form without charging interest if any and not charge anything from the complainant which is not part of the buyer's agreement.

32. The authority vide order dated 09.12.2022, in complaint case bearing no. **4147 of 2021 titled as "Vineet Choubey V/s Pareena Infrastructure Private Limited"** and also in the complaint bearing no. **4031 of 2019 titled as "Varun Gupta V/s Emaar MGF Land Limited"**, has already decided that the promoter cannot charge anything which is not part of the buyer's

agreement subject to the condition that the same are in accordance with the prevailing law.

33. Perusal of case file reveals that the demand raised by the respondent via letter dated 09.08.2024 was towards payment of interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

34. Also, the respondent is directed to raise last demand only in accordance with the builder buyer agreement.

G.III Award a cost of Rs.1,00,000/- towards litigation expenses in favor of the complainant and against the opposite party.

35. The complainant is also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR(c),357*** has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority:

36. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation

cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- I. The respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. 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 payable by both the parties for delay, if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- IV. 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 complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of



this order, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.

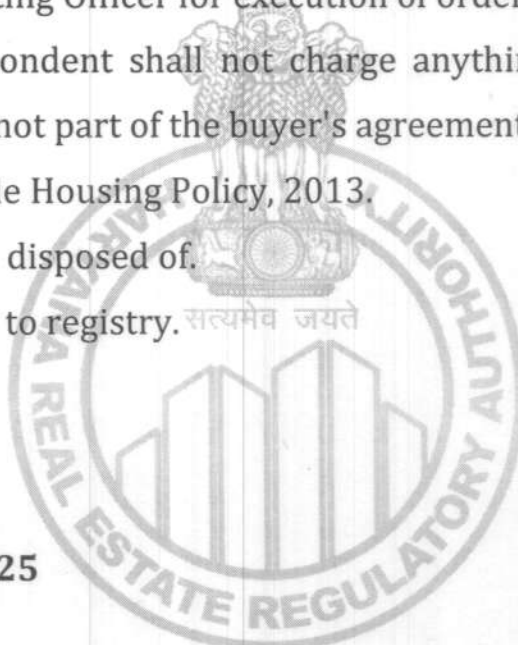
VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the Adjudicating Officer for execution of order.

VII. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.

37. Complaint stands disposed of.

38. File be consigned to registry.

Dated: 16.07.2025



HARERA
GURUGRAM

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