

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

Date of decision: 14.05.2025

| 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/4144/2024 | Sahab Ram Tiwari Vs. Sunrays Heights Private Limited | Shri Vijay Pratap Singh Shri Harsh Jain |
| 2. | CR/4145/2024 | Noopur Agarwal Vs. Sunrays Heights Private Limited | Shri Gaurav Rawat Shri Harsh Jain |
| 3. | CR/5726/2024 | Mitali Goyal Vs. Sunrays Heights Private Limited | Shri Gaurav Rawat Shri Harsh Jain |

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:

| | |
|---|--|
| Project Name and Location | "63 Golf Drive" at Sector - 63A, Gurugram, Haryana |
| Project area | 9.7015625 acres |
| DTCP License No. and validity | 82 of 2014 dated 08.08.2014 Valid up to 31.12.2023 |
| RERA Registered or Not Registered | Registered Registration no. 249 of 2017 dated 26.09.2017 valid up to 25.09.2022 |
| Date of approval of building plans | 10.03.2015 |
| Date of environment clearance | 16.09.2016 |
| Possession Clause | 4. Possession <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> *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> |
| 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 | 31.12.2024 |

| 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 |
|---------|--|--|--------------------------------------|---|---|
| 1. | CR/4144/2024 Sahab Ram Tiwari Vs. Sunrays Heights Pvt. Ltd. DOF: 29.08.2024 Reply: 30.01.2025 | 44, Tower C Carpet area- 361.89 sq. ft. Balcony area- 69.84 sq. ft. | 18.04.2016 (Page 47 of complaint) | BSP-Rs. 14,82,480/- (Page 34 of complaint) AP-Rs. 13,50,064/- (Page 67 of reply) | Not Offered Publication in newspaper: 06.04.2024 (Page 67 of reply) |
| 2. | CR/4145/2024 Noopur Agarwal Vs. Sunrays Heights Pvt. Ltd. and Ors. DOF: 29.08.2024 Reply: 30.01.2025 | 34, Tower A Carpet area- 361.89 sq. ft. Balcony area- 69.84 sq. ft. | April 2016 (Page 61 of complaint) | BSP-Rs. 14,82,480/- (Page 75 of complaint) AP-Rs. 13,56,955/- (Page 70 of reply) | Not Offered Publication in newspaper: 06.04.2024 (Page 67 of reply) |
| 3. | CR/5726/2024 Mitali Goyal Vs. Sunrays Heights Pvt. Ltd. DOF: 03.12.2024 | 26, Tower H Carpet area- 605.10 sq. ft. Balcony area- 94.94 sq. ft. | 01.07.2016 (Page 24 of complaint) | BSP-Rs. 24,67,870/- (Page 37 of complaint) AP-Rs. 22,46,727/- (Page 57 of reply) | Not Offered Publication of cancellation in newspaper: 06.04.2024 (Page 56 of reply) |

| | | | | |
|--|-------------------------------|--|--|--|
| Reply: 13.02.2025 | | | | |
| The complainant herein is seeking the following reliefs: | | | | |
| <ol style="list-style-type: none">1. Direct the respondent to pay delay possession charges from due date of possession till handing over the possession before executing the conveyance deed.2. Direct the respondent to provide committed date of completion of the unit.3. Direct the respondent to handover possession complete in all aspects and not to deliver an incomplete unit.4. Direct the respondent to get the conveyance deed executed.5. Order the respondent not to force the complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.6. Direct the respondent to provide an exact layout plan of the said unit.7. Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or before giving actual possession of unit complete in all aspects.8. Restrain the respondent from raising any fresh demand for payment under any head which is not part of the payment plan as agreed at the time of booking.9. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like IFMS, fixed deposit towards HVAT, which in any case is not payable by the complainant. | | | | |
| 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 | | | |

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 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.
5. 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.

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/4144/2024 titled as "Sahab Ram Tiwari 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/4144/2024 - "Sahab Ram Tiwari Vs. 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. | C-44 (page 60 of complaint) |
| 6. | Unit admeasuring | 361.89 sq. ft. (carpet area) 69.84(balcony area) (page 60 of complaint) |
| 7. | Provisional Allotment letter | 11.01.2016 (page 33 of complaint) |
| 8. | Date of execution of Buyers agreement | 18.04.2016 (page 47 of complaint) |
| 9. | Possession clause | 4. POSSESSION "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 |

| | | |
|-----|--------------------------------|--|
| | | <i>majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms stipulated in the present agreement."</i> (page 38 of complaint) *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 (Taken from another file of the same project-CR/476/2023) |
| 11. | Date of environment clearance | 16.09.2016 (Taken from another file of the same project-CR/476/2023) |
| 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. 14,82,480/- (page 34 of complaint) |
| 14. | Amount paid by the complainant | Rs. 13,50,064/- (as alleged by complainant) |
| 15. | Publication in newspaper | 06.04.2024 (Page 67 of reply) |
| 16. | Occupation certificate | Not obtained |
| 17. | Offer of possession | Not offered |

B. Facts of the complaint

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

- a) That in 2015, the respondent issued an advertisement announcing an Affordable Housing Project called "63 Golf Drive", situated at Sector 63A, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent

- confirmed that the projects had got building plan approval from the authority.
- b) That relying on various representations and assurances given by the respondents and on belief of such assurances, the complainant booked a unit in the project by paying a booking amount towards the booking of the said unit bearing no. C44, Type 1B, in Sector 63A, Gurugram having carpet area measuring 361.89 sq. ft. and balcony area 69.84 sq. ft. to the respondent on 11.01.2016.
- c) That the respondent confirm the booking of the unit to the complainant vide provisional allotment letter dated 11.01.2016, providing the details of the project, confirming the booking of the unit through allotment letter dated 22.06.2017, allotting a unit no. C44, Type 1B, in Sector 63A, Gurugram having carpet area measuring 361.89 sq. ft. and balcony area 69.84 sq. ft., in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.14,82,480/- which includes basic price, parking charges, and development charges, PLC, IFMS, IBRF, club membership charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.
- d) That a builder buyer agreement was executed between the parties on 18.04.2016. The allotment of the unit and agreement has been executed after coming into force of the RERA Act, 2016 but respondent failed to fulfil and abide by the provisions of the RERA Act, 2016, as the agreement executed is not as per standard format provided under the Act. Hence, penal action to be initiated against the respondent builder.
- e) That as per clause 4 of the buyer's agreement the respondent shall endeavor to handover possession of the sold flat within of period of

4years i.e., 48 months from the date 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 the agreement. Therefore, due date of possession comes out to be 18.04.2020.

- f) That as per the demands raised by the respondent, based on the payment plan, the complainant paid a sum of Rs. 13,50,064/- against the total sale consideration of Rs. 14,82,480/-. Further, as per clause 4 of the buyer's agreement the respondent had to deliver the possession on or before 18.04.2020.
- g) That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/payment till the realization of money under Section 18 and 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Authority. The project in question is ongoing as defined under Rule 2(o) of the Rules *ibid* and does not fall in any of the exception provided under the Rules.

C. Relief sought by the complainant

9. The complainant has sought the following relief(s):

- I. Direct the respondent to pay delay possession charges from due date of possession till handing over the possession before executing the conveyance deed.
- II. Direct the respondent to handover possession complete in all aspects and not to deliver an incomplete unit.
- III. Direct the respondent to provide committed date of completion of the unit.
- IV. Direct the respondent to get the conveyance deed executed.
- V. Order the respondent not to force the complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

- VI. Direct the respondent to provide an exact layout plan of the said unit.
- VII. Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or before giving actual possession of unit complete in all aspects.
- VIII. Restrain the respondent from raising any fresh demand for payment under any head which is not part of the payment plan as agreed at the time of booking.
- IX. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like IFMS, fixed deposit towards HVAT, which in any case is not payable by the complainant.
- 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. C-44 in tower C, having carpet area of 361.89 sq. ft. and balcony area of 69.84 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. The respondent had no reason to suspect the Bonafide of the complainant and proceeded to allot the unit in question in their favor.
 - 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 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.
- 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 laborers, 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 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.
- h) 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.

- i) 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.
- j) 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.
- k) 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.
- l) 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.

- m) 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.
- n) 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.
- o) That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" du 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.

- p) 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.
- q) That the respondent issued a final reminder letter dated 12.08.2024 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.
- r) 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.
- 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.1 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.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay delay possession charges from due date of possession till handing over the possession before executing the conveyance deed.

19. 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. 44, in tower C for a sale consideration of Rs.14,82,480/-. Further, the complainant is always ready and willing to retain the allotted unit in question and has paid a sum of Rs.13,50,064/- towards the allotted unit.
20. Further perusal of case file reveals that a final reminder letter dated 12.08.2024 was being sent to the complainant-allottee, thereby affording him an opportunity to clear the outstanding dues. Subsequently, upon failure to remit the said dues, the respondent published a notice in the newspaper "AAJ SAMAJ" on 06.04.2024, granting a further period of 15 days to the complainant-allottee to comply with the payment obligations in accordance with the provisions of the Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent.
21. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said publication would tantamount to a valid cancellation in the eyes of law or not?"
22. The Authority notes that the complainant has paid approximately 91% 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 remained incomplete, and the respondent has obtained the occupation certificate from the competent authority on 31.12.2024. 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.

23. Additionally, as per Clause 9.2 of the Agreement for Sale, annexed as Annexure A to the Rules, 2017, the allottee has the right to stop making further payments if the promoter defaults on its obligations. The relevant portion is reproduced below:

9.2 In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:

- (ii) **Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction/ development milestones and only thereafter the Allottee be required to make the next payment without any interest for the period of such delay; or...**

24. In the present case, the promoter was obligated to complete the construction within four years from the date of either the environment clearance or the building plan approval, whichever was later, i.e., by 16.09.2020. However, the promoter failed to complete the project within this timeline. Even after granting a six-month extension due to the Covid-19 pandemic, extending the deadline to 16.03.2021, the promoter did not complete the construction.

Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments. Therefore, considering the above findings, the cancellation of the allotment is deemed invalid and is hereby quashed as issued in bad faith. Thus, the respondent is directed to reinstate the unit allotted to the complainant.

25. Herein, 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. **Due date of handing over possession:** The project was to be developed under the Affordable Housing Policy, 2013, which clearly mandates that the project must 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). However, the respondent has chosen to disregard the policy provision. Clause 1(iv) of the Affordable Housing Policy, 2013 is reproduced as under:

"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 licences shall not be renewed

beyond the said 4 years period from the date of commencement of project."

27. 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.

28. 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."

29. 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.
30. 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., 14.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
31. 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;"*
32. 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.
33. 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.

34. 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 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*.

G.II Direct the respondent to handover possession complete in all aspects and not to deliver an incomplete unit.

G.III Direct the respondent to provide committed date of completion of the unit.

35. 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.
36. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant. The authority observes that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 31.12.2024. Further, 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.

37. In view of the above, the respondent is directed 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.

G.IV Direct the respondent to get the conveyance deed executed.

G.V Order the respondent not to force the complainant to sign any indemnity-cum-undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

38. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in **complaint bearing no. 4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.

39. Further, Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

40. The authority observes that OC in respect of the project where the subject unit is situated has already been obtained by the respondent promoter from

the competent authority. 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.VI Direct the respondent to provide an exact layout plan of the said unit.

41. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is obligated to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

G.VII Direct the respondent not to ask for monthly maintenance charges for a period of 12 months or before giving actual possession of unit complete in all aspects.

42. The issue of maintenance charges has already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in Affordable Group Housing Colonies and services for which maintenance charges can be charged from the allottees as per consumption. According, the promoter can only charge

maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in Category-II of the office order dated 31.01.2024.

G.VIII Restrain the respondent from raising any fresh demand for payment under any head which is not part of the payment plan as agreed at the time of booking.

G.IX Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like IFMS, fixed deposit towards HVAT, which in any case is not payable by the complainant.

43. 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. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and the provisions of Affordable Group Housing Policy of 2013 and is directed to charge the demands relying on the above said orders.

H. Directions of the authority

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

I. The respondent is directed to pay delay possession charges 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 offer of possession plus 2 months 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, *ibid*.

- 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 complainant shall deposit the last demand raised by the respondent, if any outstanding remains after adjustment of the delayed possession charges.
- IV. 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.
- V. 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.
- VI. 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.
- VII. 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.

- VIII. The respondent is directed to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.
- IX. The respondent is directed to charge maintenance/use/utility charges from the complainant-allottee only as per the consumption as has been prescribed in Category-II of the office order dated 31.01.2024.
- X. 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.
45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
46. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
47. Files be consigned to the registry.

Dated: 14.05.2025



Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram