



HARERA
GURUGRAM

Complaint No. 2692 of 2023

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

Complaint no. 2692 of 2023
Date of filing: 03.07.2023
Date of decision: 23.05.2025

Geetika Sharma

R/o: H.No. 596-C, Model Town, Near Kalaliya
Bhawan, Panipat, Haryana.

Complainant

Versus

M/s Sunrays Heights Pvt. Ltd.

Address: 211, 2nd floor, Ansal Bhawan,
K.G. Marg, New Delhi.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Vijay Pratap Singh

Shri Tushar Behmani

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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A. Project and unit 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. N.	Particulars	Details
1.	Name of the project	63 Golf Drive, Sector-63-A, Gurugram, Haryana
2.	Project area	5.90 acres
3.	Nature of the project	Affordable group housing
4.	RERA registered or not registered	Registered vide registration no. 249 of 2017 dated 26.09.2017
	Validity status	25.09.2022
5.	DTPC License no.	82 of 2014 dated 08.08.2014
	Validity status	31.12.2023
6.	Unit no.	G-96 [Page 31 of complaint]
7.	Unit admeasuring	613.31 sq. ft. (Carpet area) 95.10 sq. ft. (Balcony area) [Page 31 of complaint]
8.	Provisional allotment letter	11.01.2016 [Page 17 of complaint]
9.	Date of Builder Buyers agreement	27.01.2016 [As per resolution date on 1 st page of agreement as the BBA is undated]

10.	Possession clause	<p>4. POSSESSION</p> <p><i>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 project, subject to force majeure & timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i></p> <p><i>[Page 21 of complaint]</i></p> <p>*Note: As per affordable housing policy 2013</p> <p><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>
11.	Date of building plan	<p>10.03.2015</p> <p><i>[Page 40 of reply]</i></p>
12.	Date of environment clearance	<p>16.09.2016</p> <p><i>[Page 46 of reply]</i></p>
13.	Due date of possession	<p>16.03.2021</p> <p>Note: The due date is calculated from the date of environment clearance dated 16.09.2016 being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for</p>

		the projects having completion date on or after 25.03.2020
14.	Total sale consideration	Rs. 26,14,104/- [As per SOA dated 01.10.2024 on page 65 of reply dated 23.10.2024]
15.	Amount paid by the complainant	Rs. 22,76,731/- (Rs. 19,39,122 (demand letter dated 16.05.2023, page 15 of application) + Rs.3,37,609/- paid on 22.12.2023, page 16 of application)
16.	Final reminder	15.03.2024 [Page 58 of reply dated 23.10.2024]
	Public notice through Newspaper	06.04.2024 [Page 60 of reply dated 23.10.2024]
17.	Payment reminder	12.04.2024 [Page 61 of reply dated 23.10.2024]
18.	Letter by the respondent confirming cancellation on 21.04.2024 and requesting the complainant allottee to collect cheque of refunded amount	22.04.2024 [Page 62 of reply dated 23.10.2024]
19.	Occupation certificate	31.12.2024 (Taken from another file of the same project) (Applied on 08.12.2023)
20.	Offer of possession	Not offered

B. Facts of the complaint

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

- That on the basis of the representations and tall claims made by the marketing staff of the respondent and advertisement made in the local



newspaper, the complainant approached to the respondent for booking of a unit vide application bearing no. SGDC1167, having carpet area of 613.31 sq. ft. and balcony area of 95.10 sq. ft. in the project "63 Golf-Drive" floated under Haryana Affordable Housing Policy, 2013 located at Sector 63A, Gurgaon, Haryana. The draw of the said project was held wherein the complainant was allotted unit no. G96 at tower G and allotment letter was issued by the respondent on 11.01.2016.

- b) That the buyer's agreement was executed between the parties on 04.02.2016. As per clause 4.1, the respondent had to complete the construction of flat and handover the possession latest by 16.09.2020 considering the project commencement date from environmental clearance dated 16.09.2016. The total sale consideration of the unit was ₹ 25,00,790/- and applicable taxes payable. The complainant has paid ₹ 22,76,731/- till the date of filing of case before the Authority as and when the demands were raised by the respondent in time bound manner.
- c) That as per the slow pace construction and absence of basic amenities, respondents are delayed heavily in giving possession. As per section 19(6) of the Act, the complainant has fulfilled his responsibilities in regard to making the necessary payments in the manner and within the time specified in the agreement. Therefore, the complainant herein is not in breach of any of its terms of the Agreement.
- d) That the respondent has indulged in all kinds of tricks and blatant illegalities in booking and drafting BBA and cause deliberate and intentional huge mental and physical harassment of the complainant. The BBA consists of very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature. As every clause of the agreement is drafted in a one sided way, even a single breach of



unilateral terms of BBA by complainant, will cost him forfeiting of earnest money and about delay payment charges 15% Respondent has not prepared the BBA as per the terms and conditions mentioned under the Affordable Policy, 2013 and the Act.

- e) That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.
- f) That due to the malafide intentions of the respondent and non-delivery of the unit, the complainant in time has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered dark as the planning with which the complainant invested the hard-earned monies have resulted in subzero results and borne thorns instead of bearing fruits.
- g) That the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the unit which is the subject matter of this complaint is situated in Sector 63A, Gurugram, which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainant

- 4. The complainant has sought the following relief(s) by way of complaint and by way of application dated 04.04.2024 and 08.05.2024:
 - I. Quash letter dated 15.03.2024 addressed to the complainant as "Final Reminder to clear outstanding against Unit No. G96" by fabricating the due date on SOA dated 15.03.2024 despite the fact that the final and last demand has not yet been raised by the respondent and thereby wrongly interpreting the Haryana Affordable Housing Policy, 2013.
 - II. Direct the respondent to issue receipt against payment of Rs.3,37,609/- dated 22.12.2023 made by the complainant and update statement of account.

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- III. To set aside email dated 26.04.2024 w.r.t cancellation of unit bearing no. G-96 and reinstate the subject unit.
 - IV. Direct the respondent to pay interest at prescribed rate on amount paid by the complainant for delay period starting from 16th March 2021 till actual hand over of the physical possession by the respondent to the complainant and future interest till actual possession. or offer of possession plus 2 months after obtaining OC whichever is earlier, as per the provisions of the Act.
 - V. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in the brochure after getting occupation certificate.
 - VI. Pass such other and further order(s) as this Hon'ble Regulatory Authority may deem fit and proper in the facts and circumstances of the present case.
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, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. G-96, admeasuring carpet area of 613.31 sq. ft. (approx.) and balcony area of 95.10 sq. ft. (approx.) was provisionally allotted to the complainant. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor. Thereafter, an Agreement to sell (the "Agreement") was executed on 27.01.2016 between the complainant and the respondent. It is pertinent to mention that the Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

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- 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. As per clause 4.1 of the Agreement, the Respondent endeavoured to offer possession within a period of 4 (four) years from the date of obtainment of all government sanctions and permissions including environment clearance, whichever is later and the same is at par with the clause 1(iv) of the Affordable Housing Policy.
- c) That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. 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 25th March 2020, on account of unprecedented conditions due to the outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- d) That however, the offer of possession was also subject to the incidence of *force majeure* circumstances under clause 16 of the Agreement. That the construction and development of the Project was deeply affected by such circumstances which are beyond the control of the respondent. The respondent was faced with certain other *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of



water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (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.

- e) That additionally, even before normalcy could resume, the world was hit by the Covid-19 pandemic. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana, have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of the Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was



imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (**103 days**), each and every activity including the construction activity was banned in the State. It is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing Projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

- f) That it is safely concluded that the said delay of **422 days** in the seamless execution of the project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and the documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure* in terms with the agreement.
- g) That in a similar case where such orders were brought before the Ld. Authority was in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Hon'ble Authority was pleased to allow the grace period. Similarly, the respondent relied on order dated 02.11.2021 passed in appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur Sons Hi- Tech Infrastructure Pvt Ltd., 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 and order dated 30.11.2023 passed in Sukhbir Singh v. Vatika Ltd in Complaint bearing No. 1243 of 2023.

- h) That 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, as a gesture of goodwill, with good intent, the Respondent got a 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. Further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for the water connection, and the electrical inspection report. The respondent has applied for an Occupation Certificate on 08.12.2023. Furthermore, the period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the computation of the period utilized for the implementation and development of the project.
- i) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which clearly stipulated the payment of consideration of the unit in six equal installments. Not only as per the Policy, the complainant was also under the obligation to make timely payments of installments as agreed as per clause 3 of the BBA. The complainant has failed to make any payment of the instalment due at *"within 36 months from the due date of Allotment"* along with partial payments towards previous instalments. That in accordance with the same, it is submitted that the complainant, cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments as stated above. That the

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non-payment by the complainant severally 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. That the Respondent reserves its right for claim of damages before the appropriate forum.

- j) That the respondent company sent a final reminder letter dated 15.03.2024 and an email thereafter on 29.03.2024 to clear the outstanding dues Rs. 14,57,061/- mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant. in compliance with the provisions of the Affordable Housing Policy 2013. Since no payment was paid despite the issuance of a Final Reminder Letter to make the outstanding payment, the allotted unit of the complainant has already been cancelled and about this, a requisite public notice was published in the Hindi Newspaper on 06.04.2024. The Respondent on 12.04.2024 out of a good gesture requested the complainant to clear the long outstanding against the booked unit and thereafter the allotment will be re-instated but the complainant did not give any heed to the said email. The respondent on 22.04.2024, cancelled the unit in question.
- k) That the respondent company has duly received FIRE NOC from the competent authority on 22.12.2023. Thus, it is pertinent to mention here that since the respondent has duly complied with the statutory requisites the project is nearly completed and the occupation certificate has already been applied, there is no unwarranted delay in completion of the project.
- l) That the complainant has hopelessly delayed in making the payment of the balance instalment to the respondent and hence the unit of the



complainant is liable to be cancelled in terms of Clause 5(iii)(i) of the Affordable Housing Policy and clause 3.7 of the BBA. The Complainant despite all the reminders failed to make payment against the instalment. That the respondent earnestly requested the complainant to make payment. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant.

m) That in light of the bona fide conduct of the respondent and no delay for development of project as the respondent was severely affected by the force majeure circumstances and no cause of action to file the present complaint this complaint is bound be dismissed in favor of the respondent.

7. 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

8. 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

9. 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

10. 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.

11. 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.

12. 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, lockdown due to outbreak of Covid-19 pandemic.

13. 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"

14. 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. 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. Hence, all the pleas advanced in this regard are devoid of merits.

G. Findings on the relief sought by the complainant

- G.I Direct Quash letter dated 15.03.2024 addressed to the complainant as "Final Reminder to clear outstanding against Unit No. G96" by fabricating the due date on SOA dated 15.03.2024 despite the fact that the final and last demand has not yet been raised by the respondent and thereby wrongly interpreting the Haryana Affordable Housing Policy, 2013.
- G.II Direct the respondent to issue receipt against payment of Rs.3,37,609/- dated 22.12.2023 made by the complainant and update statement of account.
- G.III To set aside email dated 26.04.2024 w.r.t cancellation of unit bearing no. G-96 and reinstate the subject unit.
- G.IV Direct the respondent to pay interest at prescribed rate on amount paid by the complainant for delay period starting from 16th March 2021 till actual hand over of the physical possession by the respondent to the complainant and future interest till actual possession. or offer of possession plus 2 months after obtaining OC whichever is earlier, as per the provisions of the Act.
- G.V Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in the brochure after getting occupation certificate.
15. The factual matrix of the case reveals that the complainant was allotted unit no. G-96, Tower-G admeasuring carpet area of 613.31 sq. ft. and a balcony

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area of 95.10 sq. ft., in the respondent's project at basic sale price of Rs.25,00,790/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 27.01.2016. The possession of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of Rs.22,76,731/- towards the subject unit.

16. The complainant filed an application seeking direction to quash the letter dated 15.03.2024 issued by the respondent as "final reminder". A final reminder letter dated 15.03.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of Rs.14,57,061/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 06.04.2024 as required under Affordable Group Housing Policy, 2013. Thereafter a letter dated 12.04.2024 was sent by the respondent giving an opportunity to the complainant to clear the outstanding dues and upon non-payment of the same, the respondent issued a letter dated 22.04.2024 confirming cancellation on 21.04.2024 and requesting the complainant allottee to collect cheque of refunded amount.

17. 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?"

18. The Authority observes that the respondent had sent a demand letter dated 16.05.2023 to the complainant with a request to pay the instalment of Rs.3,48,432/- (Rs.3,37,609/- towards due installment + Rs.10,832 as delayed interest) payable on or before 14.06.2023. However, the complainant paid an amount of Rs. 3,37,609/- towards due instalment only on 22.12.2023.

Thereafter, the respondent issued "Final Reminder Letter" dated 15.03.2024,



directing the complainant to clear the outstanding dues amounting to Rs. 14,57,061/-. It is pertinent to mention here that the complainant had already paid an amount of Rs.22,76,731- (i.e., 87.09%) against the total consideration of Rs.26,14,104/- to the respondent by 22.12.2023. Per se, it is evident that the amount demanded by the respondent vide letter dated 15.03.2024 is more than 50% of the total sale consideration and prima facie seems to be arbitrary and cryptic. Perusal of case file reveals that the demand raised by the respondent via letter dated 15.03.2024 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(z) of the Act. Also, the respondent is directed to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013 and shall not charge anything from the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.

19. Moreover, vide order dated 23.04.2024, in M.A. no. 233/2024 in CR/1244/2022 titled as "*Sixty Three Golf Drive Flat Buyers Association Vs. Sunrays Heights Pvt. Ltd.*", the Authority had directed the respondent not to cancel any unit of the allottees of the project where more than 85% of the sale consideration has already been paid by the allottee, and without following the due process prescribed in the Affordable Housing Policy.
20. The Authority further notes that the complainant has paid approximately 87% 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, the possession was to be handed over by 16.03.2021, however, the respondent has failed to complete the project. Thereafter, 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.

21. 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...

(Emphasis Supplied)

22. In the present case, the respondent-promoter was obligated to complete the construction by 16.03.2021, including a six-month extension due to the Covid-19 pandemic. However, the respondent-promoter failed to complete the project within this timeline. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.

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23. 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.
24. 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."

25. **Due date of handing over possession:** As per clause 4.1 of the BBA executed inter se parties, the respondent proposed to handover possession of the subject unit ***within a period of four years i.e. 48 months from the date of commencement of project.*** It is pertinent to mention here that the project was to be developed under the Affordable Housing Policy, 2013. However, the respondent has chosen to disregard the policy provision. Clause 1(iv) of the Affordable Housing Policy, 2013 deals with the date of possession of the unit and completion of the project. The relevant clause 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."

(Emphasis supplied)

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26. 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**.

27. 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."

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28. 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.
29. 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., 09.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
30. The definition of term 'interest' as defined under Section 2(z) 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:
- "(z) "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;"*
31. 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.
32. 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.
33. 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*.
34. 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.
35. 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.
36. 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.

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. The cancellation is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit. Further, the respondent is directed to pay interest on the amount paid by the complainant i.e. Rs.22,76,731/- 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 respondent is directed to issue a revised account statement after adjustment of delay possession charges and thereafter the complainants are directed to pay outstanding dues, if any.
- IV. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall be charged from complainant-allottee for delay in making




payments, if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

- 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 not charge anything from the complainant which is not part of the buyer's agreement executed inter se parties and the provisions of the Affordable Housing Policy, 2013.

38. The complaint as well as application, if any, stand disposed of.

39. File be consigned to the registry.

Dated: 23.05.2025


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory
Authority, Gurugram

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