

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

Complaint no.: 4665 of 2024
Date of filing : 20.09.2024
Date of decision : 18.04.2025

Vijay Kumar Bansal
Through Saroj Mittal, GPA Holder
R/o: H.No. 105, Deep Colony, Near KK children
School, Hanumangarh, Rajasthan

Complainant

Versus

M/s Sunrays Heights Pvt. Ltd.
Address: 211, 2nd floor, Ansal Bhawan, 16,
K.G. Marg, New Delhi-110001.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPERANCE:
Shri Arun Bansal, Advocate
Shri Harsh Jain, Advocate

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*.

A. Project and unit related details

2. 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63-A, Gurugram"
2.	Project area	5.9 acres
3.	Nature of the project	Affordable Group Housing
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 Valid up to 07.08.2019
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA registration details	Registered 249 of 2017 dated 26.09.2017
7.	Allotment letter	11.01.2016 [Page 59 of complaint]
	Builder Buyer Agreement	Not executed
8.	Unit no.	G- 46 [Page 59 of complaint]
9.	Unit area admeasuring	613.31 sq. ft. (carpet area)
		95.10 sq. ft. (balcony area)
		[Page 59 of complaint]
10.	Possession clause	<i>As per affordable housing policy 2013 -</i> <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 licences shall not be renewed beyond the said 4 years period from the date of commencement of project."</i>



11.	Date of building plan approval	10.03.2015 [Page 47 of reply]
12.	Date of environment clearance	16.09.2016 [Page 53 of reply]
13.	Due date of possession	16.03.2021 (Calculated from date of environment clearances 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)
14.	Sale consideration	₹ 25,00,790/- [Page 59 of complaint]
15.	Amount paid by the complainant	₹ 22,76,804/- [As per SOA at page 68 of reply]
16.	Final Reminder letter sent by respondent to complainant	31.08.2024 [Page 78 of complaint]
17.	Publication of cancellation in newspaper	06.04.2024 but name of the complainant is not mentioned. [Page 78 of complaint]
18.	Occupation certificate	31.12.2024
19.	Offer of possession	Not offered

B. Facts of the complaint

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

- a) That the complainant in response to an advertisement dated 01.06.2015 applied for allotment of residential apartment in the aforesaid Affordable Housing Project and also submitted the requisite amount of Rs.1,25,040/- as advance deposit for booking the apartment in the aforesaid project. Vide Allotment Letter dated 11.01.2016, an apartment/Flat bearing no. G46, having Carpet Area of 613.31 sq. ft. and balcony area of 95.10 sq. ft.



- on total sale consideration of Rs.25,00,790/- and demanded Rs.5,51,955/- to complete 25% of the allotment amount.
- b) That the complainant has deposited 100% (₹26,14,414/-) to the respondent against the demand raised by the respondent. The respondent has acknowledged the receipt of the amount Rs.22,76,804/- as duly paid by complainant for aforesaid apartment. Further, the complainant as per his calculation has sent the balance principal amount of Rs.3,37,610/- (incl. GST) to the respondent through Cheque No.746125 dated 07.09.2024 drawn on Canara Bank alongwith Letter dated 07.09.2024 without prejudice of his right to seek refund along with interest through speed post on 11.09.2024 vide Consignment No. EH103325043IN. The complainant was promised the delivery of possession within the period of 4 years, as the apartments being under the Affordable Housing Scheme.
- c) That the allotment of the aforesaid apartment was made in January, 2016 in terms of application for allotment dated June, 2015. As such the possession was to be delivered by January, 2020. The instalments were to be raised in terms of the construction and the possession was to be delivered accordingly. However, the instalments were being deferred and the same were being paid as and when demanded. The delay in construction is causing delay in delivery of the possession. The possession of the said apartment has not been delivered to the complainant so far. The construction of the project was grossly delayed by more than four years and till now the construction of the said project is incomplete. As such possession could not be offered in near future.
- d) That the respondent got their project registered with the Ld. Haryana Real Estate Regulatory Authority and was given the Registration

Certificate No.249 of 2017 dated 26.09.2017. A perusal of the said Certificate would clearly show that the promoters cannot accept a sum more than 10% of the cost of the apartment as an advance payment without first entering into a written agreement for sale.

- e) That as such the respondent was required to calculate the date of completion of project from the date of grant of Environmental Clearance/Commencement of Project. In case the respondent intends to calculate the date of completion from the Environmental Clearance then they were required to call for the instalments only from the date of Environmental Clearance in a phased manner after entering into necessary agreement. Whereas, in the present case, the respondent had called for the instalments without entering into any such agreement. Therefore, the issue involved in the present case is not only the completion of date of project but also calling for the instalments without rescheduling the instalments from the date of Environment Clearance as claimed by the respondent. Thus, the execution of agreement was also delayed at the end of respondent. It is very much in the notice and knowledge of the respondent that the construction was delayed and, as such, the instalments were being deferred.
- f) now the respondent has issued a letter dated 31.08.2024 calling for the amount of Rs.16,02,089/- which was served only on 05.09.2024. The respondent did not provide any calculation details or Bank details. The respondent did not give the date of occupation or handing over the possession of project nor given the interest accrued to the complainant on account of deposits held by the respondent. The said deposit would come over and above the amount claimed by the respondent. It is surprising that the respondent themselves delayed the construction and



were deferring the calling of instalments and now at this stage they issued a impugned letter calling the instalments with interest. Even, at this belated stage the respondents are not entitled to any interest as claimed by them as per law. The respondent is not entitled to any interest, instead, the complainant is entitled to the interest for the deposits held by the respondent without offering possession. The complainant has been requesting the respondent time and again to reschedule the payment after necessary calculations. The complainant reiterated the same and replied to the said impugned letter vide e-mail dated 07.09.2024. That the complainant has also sent the reply reiterated the same through Letter dated 07.09.2024 through speed post on 11.09.2024 vide Consignment No. EH103325043IN. That it is not out of place to mention here that the complainant as per his calculation has sent the balance principal amount of Rs.3,37,610/- (incl. GST) to the respondent through Cheque No.746125 dated 07.09.2024 drawn on Canara Bank alongwith the aforesaid reply dated 07.09.2024 without prejudice of his right to seek refund along with interest. The complainant has got the calculation made as per the procedure. The said calculations would show that the complainant is entitled to refund of amount approx. Rs.14,40,000 apart from interest. As such, the complainant is filing the present complaint for necessary relief.

C. Relief sought by the complainant

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

- I. Direct the respondent to deliver the possession of the flat as per the agreement along with interest @24% p.a. from the date of payments till the date of possession of the flat.
- II. Direct the respondent to quash the impugned letter dated 31.08.2024.
- III. Direct the respondent to reschedule the payment plan after calculating the interest on the amount deposited by the complainant and received by



the promoter/builder from the date of its deposit till the handing over of possession.

- IV. Levy a penalty of 5% of the estimated cost of the real estate project for breach of its obligations to deliver possession on time under the Act.
 - V. Direct the respondent to pay compensation and damages on account of mental agony and harassment as well as litigation expenses.
 - VI. Pass any other order as this hon'ble Bench 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. G46, Tower G admeasuring carpet area of 613.31 sq. ft. (approx.) and balcony area of 95.10 sq. ft. (approx.) (the "Unit") was allotted vide provisional allotment letter dated 11.01.2016. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor.
 - b) That thereafter, an Agreement to sell (the "Agreement") was executed between the complainant and the respondent. The Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties. 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 the rights and obligations of allottee as well as the builder are completely



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

- 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. Further, 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 outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- d)
- e) That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. The construction and development of the project was 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. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts. Additionally, even before normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available laborers, contractors etc. for the construction.

- f) That as per license condition, developer is 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. However, for a normal Group Housing Project, there is no such condition applied hence, it is required that 4 years prescribed period for completion of construction of project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal or Hon'ble Supreme Court then



the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also.

- g) That in a similar case where such orders were brought before the Ld. Authority was in Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent.
- h) That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of the effect of COVID also.
- i) That the Hon'ble UP REAT at Lucknow while deciding appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur Sons Hi-Tech Infrastructure Pvt. Ltd. vide order dated 02.11.2021 has also granted the extension of 116 days to the promoter on account of delay in completion of construction on account of restriction/ban imposed by the Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- j) That despite there being several defaulters in the project, the respondent had to infuse funds into the project and had 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.

- k) That the respondent has applied for occupation certificate on 08.12.2023. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the statutory authority concerned, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. 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.
- l) That the complainant has been allotted unit under clause 5(iii)(b) of the Affordable Housing Policy, 2013, which clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the installments as per the government policy under which the unit is allotted. At the time of application, the complainant was aware 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 per BBA.
- m) That the complainant has failed to make any payment of installment "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.

- n) 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.
- o) That the respondent issued a final reminder letter dated 31.08.2024 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.
- p) That this Hon'ble Authority has adjudicated similar issues of termination/cancellation and has upheld the same noting the default on part of the complainant-allottee. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.
- q) That the complainant is not only in breach of the buyer's agreement but also in breach of the Affordable Housing Policy, 2013 and the RERA Act, 2016, by failing to make the due payments for installments. The unit has been cancelled, and this complaint is bound to be dismissed in favor of the respondent. 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.

- r) 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. 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 authority is of the view that all the pleas advanced in this regard are devoid of merit. 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. 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 deliver the possession of the flat as per the agreement along with interest @24% p.a. from the date of payments till the date of possession of the flat.**
- G.II Direct the respondent to quash the impugned letter dated 31.08.2024.**
- G.III Direct the respondent to reschedule the payment plan after calculating the interest on the amount deposited by the complainant and received by the promoter/builder from the date of its deposit till the handing over of possession.**
15. 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. 46, in tower G for a sale consideration of ₹ 25,00,790/-. Further, the complainant is always ready and willing to retain the allotted unit in question and has paid a sum of ₹22,78,294/- towards the allotted unit.

16. It is pertinent to note that a final reminder letter dated 31.08.2024 was being sent to the complainant-allottees, thereby affording him an opportunity to clear the outstanding dues. Subsequently, upon failure to remit the said dues, the respondent is alleging that it published a notice in the newspaper "AAJ SAMAJ" on 06.04.2024, granting a further period of 15 days to the complainant-allottees to comply with the payment obligations in accordance with the provisions of the Affordable Group Housing Policy, 2013.
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 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, 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 to the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest. Moreover, upon perusal of the alleged publication dated 06.04.2024, it is



observed that the alleged publication does not contain name of the complainant-allottee or unit no. or application no. of the complainant. Thus, it is obvious that the respondent has not made publications in respect of the default in making timely payments by the complainant which is in contravention of the Policy of 2013.

19. It is of grave importance to mention here that 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. 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)**

21. 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.

22. Considering the above findings, the cancellation of the allotment is deemed invalid and is hereby quashed. Thus, the respondent is directed to reinstate the unit allotted to the complainant.
23. 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."

24. **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)

25. 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**.

26. **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."

27. 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.
28. 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., 18.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
29. 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;"*
30. 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.
31. 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.
32. 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*.
33. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges 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.

Possession

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.

G.IV Levy a penalty of 5% of the estimated cost of the real estate project for breach of its obligations to deliver possession on time under the Act.

37. The above-mentioned relief sought by the complainant was not pressed by the counsel for the complainant during the pendency of the complaint or during the arguments. The authority is of the view that the complainant's counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any findings w.r.t to the above-mentioned relief.

G.V Direct the respondent to pay compensation and damages on account of mental agony and harassment as well as litigation expenses.

38. The complainant is seeking relief w.r.t compensation and litigation expenses. 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.* (supra), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation under sections 12,14,18 and section 19 and the quantum of compensation & litigation expense and the same shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority

39. 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, 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 after obtaining OC 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 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.

- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges 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 not charge anything from the complainant which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.
40. The complaint as well as application, if any, stand disposed of.
41. File be consigned to the registry.

Dated: 18.04.2025

Ashok Sangwan

Member

Haryana Real Estate Regulatory
Authority, Gurugram