

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

Date of decision: 06.05.2025

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/3037/2024	Deepak Jakhar Vs. Sunrays Heights Pvt. Ltd.	Shri Venket Rao, Advocate Shri Harshit Batra, Advocate
2.	CR/3043/2024	Adityavir Singh Vs. Sunrays Heights Pvt. Ltd.	Shri Venket Rao, Advocate Shri Harshit Batra, Advocate
3.	CR/3607/2024	Mamta Gulati Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Shri Gagan Sharma, Advocate

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman**Member****Member****ORDER**

1. This order shall dispose of the aforesaid 3 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 allotment letter, 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 as per the buyer's agreement	4. Possession "4.1 The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of 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."



Possession clause as per Affordable Housing Policy, 2013			Clause 1(iv) of the 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. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project."		
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 Consideration / Total Amount paid by the complainant	Offer of possession
1.	CR/3037/2024 Deepak Jakhar Vs. Sunrays Heights Private Limited DOF: 28.06.2024 Reply: 26.11.2024	38, Tower G Carpet area- 356.18 sq. ft. Balcony area- 69.84 sq. ft. (Page no. 60 of complaint)	22.11.2020 (Page no. 47 of complaint)	BSP-Rs. 14,59,640/- (Page 55 of complaint) AP-Rs. 13,79,371/- (Page 56 of reply)	Due date: 16.03.2021 OOP: Not Offered Final Reminder 19.06.2024 (Page 53 of reply)
2.	CR/3043/2024 Adityavir Singh Vs. Sunrays Heights Private Limited DOF: 28.06.2024 Reply: 26.11.2024	121, Tower E Carpet area- 356.18sq. ft. Balcony area- 69.84 sq. ft. (Page no. 48 of complaint)	19.04.2016 (Page no. 35 of complaint)	BSP-Rs. 14,59,640/- (Page 60 of reply) AP-Rs. 13,29,280/- (Page 61 of reply)	Due date: 16.03.2021 OOP: Not Offered Final Reminder 31.08.2024 (Page 58 of reply)
3.	CR/3607/2024 Mamta Gulati Vs. Sunrays Heights Private Limited DOF: 09.08.2024 Reply: 27.11.2024	82, Tower E Carpet area- 613.31 sq. ft. Balcony area- 95.10 sq. ft. (Page no. 35 of complaint)	04.02.2016 (Page no. 18 of complaint)	BSP-Rs. 25,00,790/- (Page 18 of reply) AP-Rs. 22,76,731/- (Page 19 of reply)	Due date: 16.03.2021 OOP: Not Offered Final Reminder 31.08.2024 (Page 10 of reply)

<p>The complainant herein is seeking the following reliefs:</p> <ol style="list-style-type: none"> 1. Direct the respondent to pay DPC for the period of delay in handing over of possession at prescribed rate of interest from the due date of possession i.e., 28.09.2020 till the actual handing over of possession. 2. Direct the respondent to handover peaceful physical possession of the booked unit to the complainant. 3. Direct the respondent to execute conveyance deed of the unit upon completion of the project. 4. Impose penalty upon the respondent as per provisions of Section 61 of the Act for contravention of Section 12, 13, 14 and 18 of the Act. 5. Conduct an enquiry under Section 35 of the Act against the respondent. 	
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p>	
Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. 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/3037/2024 titled as "Deepak Jakhar 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

5. 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/3037/2024 titled as "Deepak Jakhar Vs. Sunrays Heights Private Limited"

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 upto 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.	Provisional Allotment letter	21.08.2017 (Page 24 of reply)
	Builder Buyer Agreement	22.11.2020 (Page 47 of complaint)
8.	Unit no.	G-38, Tower G (Page 60 of complaint)
9.	Unit area admeasuring	Carpet Area- 356.18 sq. ft Balcony Area- 69.84 sq. ft. (Page 60 of complaint)
10.	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> <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 30 of reply)
12.	Date of environment clearance	16.09.2016 (Page 35 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	Rs.14,59,640/- (as per Payment Detailed Report dated 14.11.2024 at page 55 of reply)
15.	Amount paid by the complainant	Rs.13,79,371/- (as per Payment Detailed Report dated 14.11.2024 at page 56 of reply)
16.	Final Reminder letter sent by respondent to complainant	19.06.2024 (Page 53 of reply)
17.	Occupation certificate	31.12.2024 (Taken from another file of the same project) (Applied on 08.12.2023)
18.	Offer of possession	Not offered

B. Facts of the complaint

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

- That around the year 2015, the complainant learned about an advertisement made by the respondent in the local newspaper of a real estate project under the Affordable Housing Policy 2013, titled as '63 Golf Drive, (herein referred to as 'project') situated at Sector 63A, Gurugram Haryana.
- That upon the trust, faith and the assurances/representations provided by the respondent the complainant vide application form bearing no. SGD(B)-3617, booked a residential unit admeasuring 356.18 sq. ft. in the project and paid an amount of Rs.74,996/- as booking amount for further registration. The same was acknowledged by the respondent vide receipt no. SGD(B)- 3617.
- That as per the provision of clause 5(iii)(b) of the Affordable Housing Policy, 2013 the respondent herein was duty bound to allot the unit to the allottee(s) at large within 4 (Four) months from the date of sanction

of building plans and /or approval of environment clearance, whichever, is later.

- d) That the respondent herein obtained the approved building plans for the project in question from the concerned authority on 10.03.2015 and further obtained environment clearance on 29.09.2016. Therefore, in view of the provision of clause 5(iii)(b) of the Affordable Housing Policy, 2013 as amended up to date the respondent herein was obligated to allot the unit by 28.01.2017. But the respondent has failed to comply with the provisions of the Affordable Housing Policy and has allotted the unit in question vide provisional allotment-cum-demand letter dated 29.08.2017.
- e) That as per the provisions of clause 5(iii)(b) of the Affordable Housing Policy 2013, the complainant-allottee herein is also entitled for the interest @ 10% from the date of booking till the date allotment is delayed beyond the period of 90 days. The complainant herein has booked the unit in question on 17.04.2015 and the allotment of the unit in question has been made on 29.08.2017, which is beyond period of 90 days and thus as per the provision of clause 5(iii)(b) of the Policy 2013, the respondent is also liable to pay the interest @ 10% on the booking amount for the period from the date of booking till the date of allotment.
- f) That after a lapse of almost 4 years the respondent executed a one-sided builder buyer agreement on 20.11.2020 for a total sale consideration of Rs.14,59,640/-. The respondent herein being in dominant position had illegally made the complainant sign the same under protest.
- g) That despite accepting the booking from the complainant in the year 2015, the respondent to utilize the money of the complainant has first wasted 5 years under false assurances that the possession would be

offered soon and then had forced the complainant sign/execute the one-sided agreement in the year 2020, after lapse of almost 5 years, thereby, unilaterally making complainant wait for another 48 months for the possession of the unit in question.

- h) That the complainant complied with the payment schedule and had made each and every payment of instalment as and when payable or demanded by the respondent. But, despite receiving Rs. 13,79,371/- against the total sale consideration of Rs. 14,59,640/- the respondent herein had failed to adhere with the provisions of Affordable Housing Policy 2013, as amended up to date and have thus taken benefit of the innocence of the complainant.
- i) That the respondent with malafide intention had raised all the demands without achieving the particular stag of construction which is in violation of the terms of the agreement.
- j) That the complainant vide email dated 02.11.2017 expressed its resentment and concern over failure of the respondent in providing the possession of the unit in question within the time period as assured in the agreement. The complainant further requested the respondent to provide the exact status of the project and expected date of handing over of possession.
- k) That the project is not yet completed and is still in an uninhabitable state which is causing adverse effect to the legitimate rights of the complainant. The inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondent and therefore, the complainant is entitled for interest for delayed period and compensation as per Section 18 of Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant

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

- I. Direct the respondent to pay DPC for the period of delay in handing over of possession at prescribed rate of interest from the due date of possession i.e., 28.09.2020 till the actual handing over of possession.
 - II. Direct the respondent to handover peaceful physical possession of the booked unit to the complainant.
 - III. Direct the respondent to execute conveyance deed of the unit upon completion of the project.
 - IV. Impose penalty upon the respondent as per provisions of Section 61 of the Act for contravention of Section 12, 13, 14 and 18 of the Act.
 - V. Conduct an enquiry under Section 35 of the Act against the respondent.
8. 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

9. 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 no. SGD(B)-3617 and was allotted a unit bearing no. G-38 in tower G, having carpet area of 356.18 sq. ft. and balcony area of 69.84 sq. ft. vide allotment letter dated 21.08.2017. 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 on 22.09.2020. 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 respondent endeavored to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance, whichever is later. The possession clause of the agreement is on par with clause 1(iv) of the Affordable Housing Policy, 2013.
- d) That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. The Ld. Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 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.
- e) That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. 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 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.

- g) 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.
- 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) 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, 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. 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" 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 complainant stands in default of payments as per the payment plan. The respondent sent various demand notices dated 22.01.2018, 20.07.2019, 29.12.2021 and 15.05.2023 to the complainant to pay the instalments. The final reminder letter dated 19.06.2024 was also sent to the complainant. However, the complainant failed to adhere to these letters and make the outstanding payment.

- r) That the complainant is not only in breach of the buyer's agreement but also in breach of the Affordable Housing Policy and the RERA Act, by failing to make the due payments for instalments. The unit has been cancelled, and this complaint is bound be dismissed in favour of the respondent.
- s) 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. 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.
10. 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

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

12. 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

13. 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.

14. 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.

15. 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.

16. 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"

17. 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, except for that of Covid-19 for which relaxation of 6 months is allowed by the authority are devoid of merits.

G. Findings on the relief sought by the complainant

G.1 Direct the respondent to pay DPC for the period of delay in handing over of possession at prescribed rate of interest from the due date of possession i.e., 28.09.2020 till the actual handing over of possession.

18. The factual matrix of the case reveals that the complainant was allotted unit no. G-38, Tower G admeasuring carpet area of 356.18 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at basic sale price of 14,59,640/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 2020. The possession of the

unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of 13,79,371/- towards the subject unit.

19. During the course of proceedings dated 06.05.2025, learned counsel for the respondent submitted that the complainant has instituted proceedings before the Hon'ble National Company Law Tribunal (NCLT), Delhi Bench in Case No. IB-48 of 2025, seeking a refund along with interest at the rate of 24% per annum. It was further submitted that in the said NCLT proceedings, the date of default has been stated as 31.03.2023, whereas in the present complaint(s) before this Authority, the complainants have asserted the due date as 16.03.2021 and have sought relief in the form of delayed possession charges and delivery of possession. In response, learned counsel for the complainant submitted that the matter before the Hon'ble NCLT is at the admission stage and that no order has been passed therein as of yet.
20. Upon considering the submissions made by both parties, the Authority is of the considered view that the complaint filed before this Authority is with respect to the statutory provisions under the Real Estate (Regulation and Development) Act, 2016 which is a special Act to regulate and promote the real estate sector and to ensure sale of plot, apartment or building, as the case may be in an efficient and transparent manner and to protect the interest of consumers in the real estate sector. It is noted that the objective and scope of the Insolvency and Bankruptcy Code, 2016 (IBC) are distinct and serve a different legal purpose. It is further observed that the matter before the Hon'ble NCLT is presently at the stage of admission and no order initiating Corporate Insolvency Resolution Process (CIRP) against the respondent has been passed as on date. Therefore, at this juncture, there exists no bar under any law that prevents this Authority from proceeding to adjudicate the present complaint(s) on merits.

21. It is pertinent to note that a final reminder letter dated 19.06.2024 was being sent to the complainant-allottee to make a payment of ₹10,85,054/-, thereby affording him an opportunity to clear the outstanding dues.
22. The Authority notes that the complainant had already paid an amount of 13,79,371/- (i.e., 94.5%) against the total consideration of ₹14,59,640/- to the respondent. Per se, it is evident that the amount demanded by the respondent vide letter dated 19.06.2024 is more than 50% of the total sale consideration and prima facie seems to be arbitrary and cryptic. 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.
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...

(Emphasis Supplied)

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.
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., 06.05.2025 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(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:
- "(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 peaceful physical possession of the booked unit to the complainant.

35. 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.

36. 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 allottee 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.III Direct the respondent to execute conveyance deed of the unit upon completion of the project.

38. The complainant is seeking relief of execution of conveyance deed. A reference to the provisions of Section 17 (1) of the Act is must and it provides as under:

"Section 17: - Transfer of title

17(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 of 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.

39. 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.IV Impose penalty upon the respondent as per provisions of Section 61 of the Act for contravention of Section 12, 13, 14 and 18 of the Act.

G.V Conduct an enquiry under Section 35 of the Act against the respondent.

40. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case.

41. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant does not intend to pursue the above relief sought by him. Hence, the authority has not rendered any findings pertaining to the above-mentioned relief.

H. Directions of the authority

42. 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 interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee

before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid.*

- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(zb) of the Act. Further, no interest shall be payable by both the parties for delay, if any between 6 months Covid period from 01.03.2020 to 01.09.2020.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.
- VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

- VII. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.
43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
45. Files be consigned to the registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025

HARERA
GURUGRAM