

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

Complaint no.: 3961 of 2024
Date of filing: 20.08.2024
Date of decision: 11.07.2025

Ms. Shefali Sharma
R/o: 1406, Tower 2, Valley View Estate,
Gwalpahari, Gurugram, Haryana-122003

Complainant

Versus

M/s Sunrays Heights Private Limited
Office at: 211, 2nd floor, Ansal Bhawan, 16 Kasturba
Gandhi Marg, New Delhi-110001.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Vijay Pratap Singh
Shri Harsh Jain

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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	5.90 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
6.	RERA registration details	Registered 249 of 2017 dated 26.09.2017 Valid up to- 25.09.2022
7.	Builder Buyer Agreement	08.07.2019 (Page 21 of complaint)
8.	Unit no.	H-116, Tower H (Page 36 of complaint)
9.	Unit area admeasuring	Carpet Area- 366.25 sq. ft Balcony Area- 69.84 sq. ft. (Page 36 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> *As per affordable housing policy 2013 – <i>"1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed</i>

		<i>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	Rs. 14,99,920/- (Page 36 of complaint)
15.	Amount paid by the complainant	Rs. 14,18,444/- (Page 42 and 43 of complaint)
16.	Final Reminder letter sent by respondent to complainant	02.09.2024 (Page 64 of reply)
17.	Occupation certificate	31.12.2024 (Taken from another file of the same project) (OC applied on 08.12.2023)
18.	Offer of possession	Not offered

B. Facts of the complaint

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

- a) That in 2015, the complainant got information about an advertisement, in a local newspaper about affordable housing project "Sixty Three Golf-Drive" at Sector 63 A, Gurugram, Haryana. The marketing staff of the respondent showed a rosy picture of the project and allure with proposed specifications and invited for site visit. The complainant visited the project site and met with local staff of respondent who gave an application form and assured that possession would be delivered within

48 months as they were told that it is a govt. project having fixed 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.

- b) That the complainant applied for a 1-BHK residential unit vide application bearing no. SGG0181 in upcoming project of respondent namely "**Sixty-Three Gold Drive**", Sector 63-A, Gurugram, Haryana for which the complainant had paid an amount of Rs. 73,950/- towards booking along with application form. The respondent allotted unit no. H-116, in tower H admeasuring 366.25 sq. ft. and 69.84 sq. ft. Balcony. The unit was booked under the time linked payment plan as per the mandate under the affordable housing policy 2013' for Sale consideration of Rs. 14,99,920/-. The respondent /builder never issued any copy of the allotment letter to the complainant despite repeatedly demanding for same.
- c) That on dated 07.07.2019, a pre-printed one sided, arbitrary and unilateral buyer's agreement for allotted unit was executed between the parties and was registered. As per clause 4.1 of the said agreement, the respondent had to complete the construction of flat and handover the possession within 4 years from the date of commencement of project.
- d) That till date the respondent has raised a demand of Rs. 14,18,444/- against which the complainant has paid Rs14,18,444/- (As per the demand notice dated 15.05.2023 and RTGS dated 14.06.2023, ICICI bank disbursal statement) i.e., 100% of demanded money, but when complainant observed that there is very slow progress in the construction of subject flat for a long time, he raised his grievance to the respondent.

- e) That the said affordable housing project was proposed to be developed under the affordable housing policy 2013, issued by the Government of Haryana, vide town and country planning department notification dated 19/08/2013 and the respondent(s) herein as per the provisions of the affordable housing policy 2013, undertook and were obligated to hand over the physical possession of the said affordable housing Project in four Years. The Respondent was supposed to hand over the actual physical possession of the flat to the complainant latest by 15/03/2021 (inclusive of the grace period of 6 month).
- f) That the Respondent is hereby threatening the complainant telephonically, that he has to make the payment as per the affordable housing policy as per agreed terms of BBA, without even raising demand against the due amount and same is arbitrary and unjustified as the Respondent is registered under the GST and as per the statutory provision of the GST the respondent has to legally raise a demand against the due amount. In other words, the respondent is trying to pressurise the complainant to align the complainant in cancellation pool not even caring the hard fact that as per the BBA terms the project is already delayed by more than 3 Year from the date of promise of handing over the possession of flat. The Respondent is also threatening on mobile to the complainant that either he visits their site office and pay the interest and balance amount by issuing physical cheque else they shall cancel the flat. Moreover, the Escrow bank account of the Respondent was freeze by this Hon'ble Authority, and without the intervention and direction of this Hon'ble Authority, the payments (last demand) can't be made by the complainants. Hence this complaint.

C. Relief sought by the complainant

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

- I. Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 22,79,243/- for the period of delay w.e.f. 15.03.2021 till actual hand over of the physical possession or offer of possession plus 2 months after obtaining OC whichever is earlier, as per the provisions of the Act.
 - II. Direct the respondent to handover actual physical possession of the booked flat.
 - III. Direct the respondent to get the copy of application for Occupancy Certificate, as such the Respondent claims that they have applied for the OC.
 - IV. 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 as per rule 28(1)(a) of the Rules, a complaint under section 31 of RERA Act can be filed for any alleged violation or contravention of the provisions of the RERA Act after such violation and/or contravention has been established after an enquiry made by the Authority under Section 35 of RERA Act. In the present case no violation and/or contravention has been established by the Authority under Section 35 of RERA Act and as such the complaint is liable to be dismissed.
 - b) That the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the Act came into force. In the present case also, the booking was executed

much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case.

- c) That the respondent's promise to complete the construction within the period given in the said clause was dependent upon timely payment of the instalments by the complainant. Since the complainant failed to make payment as per the agreed payment schedule, the respondent was under no obligation to complete the construction within the given period. As such, the complainant cannot be allowed to seek interest and/or compensation or to rescind the contract and seek refund of the amount on the ground that the construction was not completed within the given period. The respondent relies upon Section 53 and Section 54 of the Indian Contract Act 1872 in this regard.
- d) That the complainant has no locus standi to file the present complaint. The complainant has failed to produce any registration certificate or memorandum of its objects. Thus, the complainant cannot be given a legal status in the absence of such documents and therefore is not entitled to file and prosecute the instant proceedings.
- e) That the complainant out of their own free will and volition chose not to make payment in terms of the agreed schedule of payments as a result of which the respondent was constrained to cancel the allotment made in favour of the complainant. The respondent sent two copies of the buyer's agreement to the complainant. However, for the reasons best known to the complainant even after repeated reminders and follow-ups being sent to the complainant, the complainant did not act further and executed the buyer's agreement.
- f) That the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the

responsibility of the Court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.

- g) That the complainant is chronic defaulters in making payment on time contrary to the agreed terms. On many occasions, repeated demand letters and reminders were issued to the complainant for payment and consequently the allotment made in favour of the complainant was cancelled by the respondent. Even after repeated demands, complainant was not ready to make the payment.
- h) That the Hon'ble Supreme Court of India further In the case of "Gannmani Anasuya and Others v. Parvatini Amarendra Chowdhary and Others, (2007) 10 SCC 296", has highlighted with reference to Section 3 of the Limitation Act that it is for the Court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties; such a jurisdictional fact need not be even pleaded.
- i) 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 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.
- j) That however, 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 deeply affected by such circumstances which are beyond the control of the respondent.

- k) That 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 for a total of 298 days.
- l) That the covid-19 pandemic resulted in serious challenges to the project with no available laborers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days

which started on 25.03.2020. By virtue of 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, and stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop., etc.

- m) That despite the default caused, as a gesture of goodwill, with good intent 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. That further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.
- n) 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 concerned statutory authority, 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 period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.
- o) 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. The complainant is liable to make the payment of the installments as per the government policy under which the unit is allotted. That at the time of application, the complainant was aware about the duty to make timely payment of the installments.

- p) That the complainant has failed to make any payment of the installment at "within 36 months from the due date of Allotment" due on April 2019 along with partial payments towards previous installments. The non-payment by the complainant affected the construction of the project and funds of the respondent. Due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount.
- q) 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, 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.I Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 22,79,243/- for the period of delay w.e.f. 15.03.2021 till actual hand over of the physical possession or offer of possession plus 2 months after obtaining OC whichever is earlier, as per the provisions of the Act.

15. The factual matrix of the case reveals that the complainant was allotted unit no. H-116, Tower H admeasuring carpet area of 366.25 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at basic sale price of 14,99,920/- under the Affordable Group Housing Policy, 2013. A buyer's

agreement was executed between the parties on 08.07.2019. The possession of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of Rs. 14,18,444/- towards the subject unit.

16. During the course of proceedings dated 04.07.2025, 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. Whereas in the present complaint(s) before this Authority, the complainant has 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.
17. 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 matter 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.

18. It is pertinent to note that a final reminder letter dated 02.09.2024 was being sent to the complainant-allottee to make a payment of ₹8,31,870/-, thereby affording him an opportunity to clear the outstanding 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.
19. The Authority notes that the complainant had already paid an amount of ₹ 14,18,444/- (i.e., 94.56%) against the basic sale consideration of ₹ 14,99,920/- to the respondent. The respondent was required to hand over the project by 16.09.2020 under the Affordable Housing Policy, 2013, excluding the COVID-19 grace period. Even with a six-month grace period in lieu of Covid-19 pandemic to 16.03.2021, the respondent failed to complete the project. More than three years later, the project remained incomplete, and the respondent has obtained the occupation certificate from the competent authority on 31.12.2024. The interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant. Despite this, the respondent chose to threaten the 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.

20. It is of grave importance to mention here that vide order dated **07.02.2025**, the Authority had directed the respondent to not to cancel the unit of the complainant and not to create third party rights till the disposal of the complaint. Further, the respondent was directed to maintain status quo till further orders. Subsequently, 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.

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 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.

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:** 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."

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., 11.07.2025 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. 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 actual physical possession of the booked flat.

32. 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.
33. 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 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.
34. 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.
35. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation

certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act.

G.III Direct the respondent to get the copy of application for Occupancy Certificate, as such the Respondent claims that they have applied for the OC.

36. As per the submissions made by the counsel for the respondent, the Authority finds that the respondent has obtained the occupation certificate for the said project on 31.12.2024.

37. As per Section 11(4)(b) of Act of 2016, the respondent is under an obligation to supply a copy of the occupation certificate/completion certificate or both to the complainant-allottee. The relevant part of section 11 of the Act is reproduced as hereunder: -

"11(4)....

(b) The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

38. Even otherwise, it being a public document, the allottee can have access to the it from the website of DTCP, Haryana.

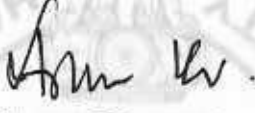
H. Directions of the authority

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 respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.

- VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act.
- 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.
40. The complaint stands disposed of.
41. Files be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.07.2025

HARERA
GURUGRAM