

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Complaint no.:** 5195 of 2024
Date of decision: 04.09.2025

Satyawart Sangwan

R/o: - House no. 236 Ghikra Road, Charkhi Dadri**Complainant**

Versus

M/s Sunray Heights Private Limited

Regd. office at: 211, 2nd floor, Ansal Bhawan, 16 Kasturba Gandhi
Margh, New Delhi- 110001**Respondent****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Garvit Gupta (Advocate)

Shri Tushar Behmani (Advocate)

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 provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.
- A. Unit and project related details**
2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable group housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	J-94, in tower-J (Page no. 25 of complaint)
6.	Unit admeasuring	361.89 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) (Page no. 25 of complaint)
7.	Allotment Letter	11.01.2016 (Page no. 25 of complaint)
8.	Date of execution of Buyers agreement	02.06.2017 (Stamp Duty date) (Page no. 33 of the reply)
9.	Possession clause	<p>4.1</p> <p><i>The Developer shall endeavor to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i></p> <p><i>(page no. 39 of reply)</i></p> <p>*Note:- As per affordable housing policy 2013 1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.</p>
10.	Date of building plan	10.03.2015 (Page no. 52 of reply)

11.	Date of environment clearance	16.09.2016 (Page no. 58 of reply)
12.	Due date of possession	16.03.2021 (Note:- calculated from the date of environment clearance i.e., 16.09.2016 being later plus six months in lieu of covid-19)
13.	Total sale consideration	Rs.14,82,480/- (As per annexure-A, annexed with payment plan at page 49 of reply)
14.	Amount paid by the complainant	Rs.13,01,733/- (As per receipt information at page 91 of reply)
15.	Final reminder	25.01.2023, 02.02.2023, 14.02.2023, (Page no. 87 of reply)
16.	Newspaper publication	16.10.2024 (Page no. 84 of reply)
17.	Occupation certificate	31.12.2024 (Page no. 69 of reply)
18.	Offer of possession	Not on record

B. Facts of the complaint

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

- a) That the complainant, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The marketing staff of the respondent also assured timely delivery of the unit. It was further assured by the respondent to the complainant that the possession of the unit would be handed over strictly as per the provisions of the Affordable Housing Policy, 2013 i.e., within 4 years from the date of grant of building plan or environment clearance, whichever is later. The assertions of the respondent concerned with impeccable services and timely completion of the said project were believed by

the complainant and complainant decided to make the booking in the month of January, 2016 vide their booking application form no. SGDB1351.

- b) That pursuant to the booking of a unit in the project of respondent by the complainant and after draw of lots conducted by the respondent on 06.01.2016, the respondent allotted a flat bearing no. J-94, admeasuring carpet area of 361.89 sq. ft. @ Rs.4,000/- per sq. ft. and a balcony area of 69.84 sq. ft. in the said project to the complainant vide its provisional allotment letter dated 11.01.2016. The respondent vide the said provisional allotment letter informed the complainant that the total sale consideration of the said allotted unit would be Rs.14,82,480/-. Furthermore, the respondent vide the said allotment letter dated 11.01.2016 demanded an amount of Rs.3,31,733/- from the complainant and the complainant without any delay or default remitted the said dues as acknowledged by the respondent vide its receipt dated 27.01.2016.
- c) That after a considerable delay, a copy of the apartment buyer's agreement was shared by the respondent with the complainant. The complainant made it clear to the respondent that the complainant required the unit in a time bound manner for his own use and occupation and of his family members. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the apartment would be positively handed over to the complainant within the agreed time frame as per the provisions of the Affordable Housing Policy, 2013. The respondent had very conveniently tried to misinterpret the provisions of the Policy, 2013. As per the provisions of the Affordable Housing Policy, 2013, the due date to handover the possession is 4 years from the date of approval of building plan or environment clearance, whichever is later. However, as per clause 4.1 of the buyer's agreement, the respondent stated that it would hand over the possession of the flat within a period of 4 years from the date of commencement of the project.

The said clause was in complete contrast to the provisions of the Affordable Housing Policy, 2013.

- d) That the respondent was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainant and the same is evident from a bare perusal of Clause 3.7 of the said agreement. The respondent had given itself the liberty to charge interest from the complainant on account of delay in making the payments. However, no such clause is there in the agreement with respect to the delay on the part of the respondent in handing over of possession or complying with its obligations.
- e) That the complainant made vocal his objections to the arbitrary and unilateral clauses of the apartment buyer's agreement to the respondent. It is pertinent to mention herein that prior to the signing of the apartment buyer's agreement, complainant had made payment of a significant amount. The respondent categorically assured the complainant that he need not worry and that the respondent would strictly adhere to the timeline, terms of the allotment and the provisions laid down by law including the Policy, 2013 and Act, 2016. Since the complainant had already parted with a considerable amount, he was left with no other option but to accept the lopsided and one-sided terms of the apartment buyer's agreement. The complainant felt trapped and had no other option but to sign the dotted lines. Hence the builder buyer's agreement was executed. However, the respondent did not handover the copy of the said builder buyer's agreement to the complainant despite multiple reminders by the complainant. That terms and conditions in the agreements executed by the respondent with the allottees of the project are standard and identical in nature. The respondent be directed under Section 35(2) of the Act, 2016 to produce the said agreement executed with the complainant.

- f) That as per builder buyer's agreement that the building plan of the project was approved on 10.03.2015 from DGTCP and environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of environment clearance, comes out to be 16.09.2020.
- g) That, the respondent failed to intimate the complainant about the construction status of the tower in which the unit allotted to the complainant was located. The complainant was constrained to confront the respondent vide several telephonic conversations about the due date of handing over of possession. However, the genuine queries of the complainant went unheard and no proper reply was received nor any latest status of the construction was given to the complainant by the respondent. The complainant was left with no other option but to himself visit the construction site in the month of December, 2021 to check the status of the construction on site. Upon reaching the site, the complainant was shocked and appalled as he saw that no construction was going on in respect of the tower wherein the unit of the complainant was situated and thereby giving the impression that the demands raised by the respondent were not corresponding with the actual construction at site.
- h) That the complainant vide several reminders through telephonic conversations and by visiting the office of the respondent reminded the respondent of intimating the Complainant about the status of the construction of the project. However, the respondent miserably failed to do so. The respondent is duty bound to update the complainant as well as other allottees about the construction of the project under Sections 19(1), & (2) and (3) of the Act, 2016.
- i) That the complainant visited the office of the respondent and confronted them regarding the illegalities committed by the respondent. The respondent duly assured the complainant that the respondent is nearing the stage of offering possession and thus requested the complainant to clear the outstanding dues.

However, it is pertinent to mention here that the respondent had failed to issue any demand letter whatsoever with respect to the due installment. The complainant accordingly paid a sum of Rs.9,00,000/- on 13.06.2023.

- j) That the complainant vide his email dated 13.08.2024 again requested the respondent to update the complainant about the status of the handover of the allotted unit and completion of the project and also further demanded the respondent to provide him with a detailed ledger. However, no response to the said mail was ever received by the complainant.
- k) That the respondent failed to address the genuine concerns of the complainant. The complainant was in complete shock and dismay to receive a threat letter namely final demand dated 02.09.2024 from the respondent wherein the respondent unlawfully and without providing any justification demanded exorbitant amount of Rs.15,49,805/-. The complainant has paid a sum of Rs.13,00,733/- out of the total sale consideration of Rs.14,82,480/-. Thus, the demand as raised by the respondent vide the said reminder letter is completely baseless and frivolous and holds no valid ground. The complainant was threatened vide the said letter that if the said demand was not paid by the complainant, then the respondent would reserve its right to take action as per the provisions of the Policy, 2013.
- l) That when the complainant confronted the respondent, it was assured by the respondent that additional benefits in the form of delayed interest as per the provisions laid down by under the Act, 2016 would be given to the complainant on account of the number of days of delay of the respondent. However, yet again, the assurances of the respondent turned out to be false. The fear of the complainant turned out to be a reality wherein it now became evident that the respondent has throughout been trying to mislead the complainant by asserting false assurances and representations. The complainant is a victim of

misrepresentation on the part of the respondent. Furthermore, the respondent has now threatened the complainant that the respondent would be terminating the allotment of the complainant in case the complainant does not comply with its unlawful demands. Several other allottees have received the cancellation letter and the complainant fears that the respondent might cancel his allotment in the said project.

m) That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount and compensation. The complainant reserve his right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):
- I. Direct the respondent to pay delay possession charges from the due date of possession till actual hand over of possession.
 - II. Direct the respondent to handover the physical possession of the unit in a habitable condition after the receipt of the Occupation certificate.
 - III. Direct the respondent to provide the copy of the builder buyer agreement.
 - IV. Direct the respondent to revoke the final reminder dated 02.09.2024 and not to demand any payment from the complainant which contravenes the payment plan.
 - V. Direct the respondent to execute conveyance deed of the unit in favour of the complainant.
 - VI. Direct the respondent to provide information pertaining to the construction and approvals of the project as per Section 19 of the Act, 2016.

- VII. Pass an order imposing penalty on the builder on account of various defaults under the Act, 2016 and the same be ordered to be paid to the complainant.
- VIII. Pass an order imposing penalty on the builder on account of various defaults under the Act, 2016 and the same be ordered to be paid to the complainant.
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 an application form no. SGDC-8330 dated 03.06.2015 applied to the respondent for allotment of the unit. Pursuant thereto residential flats bearing no. J- 94 in tower J, having carpet area of 361.89 sq. ft. and balcony area of 69.84 sq. ft. was allotted vide allotment letter dated 11.01.2016. The complainant represented to the respondent that they shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favor. Thereafter, a builder buyer agreement was executed between the parties on 02.06.2017. The agreement was consciously and voluntarily executed between the parties and terms and conditions of the same are binding on the parties.
- b) That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. 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.

- c) 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 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.
- d) 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.

- e) 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.
- f) That it is safely concluded that the said delay of 450 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 450 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure in terms with the agreement.

- g) That 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.
- h) 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.
- i) 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.
- j) 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.35Crores 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. 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.
- l) 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.
- m) 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.
- n) That the complainant stands in default of payments as per the payment plan. The respondent sent multiple demands from time to time requesting the complainant to pay the installment. The respondent issued a reminder letter

dated 06.09.2022 to the complainant to clear his pending dues. The respondent subsequently raised a reminder letters dated 25.01.2023, 02.02.2023, 14.02.2023 for the outstanding dues to be clear by the complainant. The complainant himself is a defaulter, who has willingly withheld the balance amount to be paid to the respondent without any reasonable cause. As per statement of account dated 19.09.2024, the complainant has to make the pending dues.

- o) 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.

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 delay possession charges from the due date of possession i.e., 16.09.2020 till actual hand over of possession as per provisions of the Act, 2016 and the Rules of 2017.**
- G.II Direct the respondent to revoke the final reminder dated 02.09.2024 and not to demand any payment from the complainant which contravenes the payment plan.**

15. The factual matrix of the case reveals that the complainant was allotted unit no. J-94, Tower J admeasuring carpet area of 356.18 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at sale price of Rs.14,82,480/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between

the parties on 02.06.2017(stump duty generated by the parties). The possession of the unit was to be offered by 16.03.2021 as delineated herein below. The complainant paid a sum of Rs.13,01,733/- towards the subject unit.

16. 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 Rs.15,49,805/-, thereby affording him an opportunity to clear the outstanding dues. The complainant is seeking a direction to quash the letter dated 02.09.2024 issued by the respondent as "final reminder". A final reminder letter dated 02.09.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of Rs.15,49,805/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent.
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. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a **reminder** may be issued to him for depositing the due instalments within a **period of 15 days** from the date of issue of such notice. If the allottee still defaults in making the payment, the **list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State** for payment of due amount **within 15 days** from the date of publication of such notice, **failing which allotment may be cancelled**. In such cases also an amount of Rs.25,000/- may be deducted by*

the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list."

19. The Authority observes that the respondent issued "Final Reminder Letter" dated 02.09.2024, directing the complainant to clear the outstanding dues amounting to Rs.15,49,805/-. It is pertinent to mention here that the complainant had already paid an amount of Rs.13,01,733/- (i.e., 87.80%) against the sale consideration of Rs.14,82,480/- to the respondent by 08.07.2023. Perusal of case file reveals that the demand raised by the respondent via letter dated 02.09.2024 was towards the payment of last instalment accompanied with interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 10.85% 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. Also, the respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013 and shall not charge anything from the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.
20. Further, the Authority vide order dated 23.04.2024 in M.A. No. 233/2024 in CR/1244/2022 titled **"Sixty-Three Golf Drive Flat Buyers Association vs. Sunrays Heights Private Ltd."**, and also in CR/1474/2024, titled as **Avindra Kumar Singh Vs. Sunrays Heights Pvt. Ltd.** wherein a clear directive was issued restraining the respondent from cancelling the allotment of any unit in cases where more than 85% of the sale consideration had already been paid by the allottee, and without adhering to the due process stipulated under the Affordable Housing Policy.
21. The Authority notes that the complainant had already paid an amount of Rs.13,01,733/-(i.e., 87.80%) against the sale consideration of Rs.14,82,480/- to the respondent. Per se, it is evident that the amount demanded by the respondent vide

letter dated 02.09.2024 is more than 100% 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.

22. 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)

23. 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.
24. Herein, the complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by

him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

25. **Due date of handing over possession:** 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."

26. In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is 16.09.2016. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 16.09.2020. Further as per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having a completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.09.2020 i.e., after 25.03.2020. Therefore,

an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to the outbreak of Covid-19. As such the due date for handing over of possession comes out to be 16.03.2021.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

28. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.
29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 04.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of

default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(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;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent which is the same as is being granted to them in case of delayed possession charges.
32. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement.
33. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @ 10.85% 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.III Direct the respondent to handover the physical possession of the unit in question to the complainant, after obtaining occupancy certificate.

G.IV Direct the respondent to execute conveyance deed of the unit in favour of the complainant.



34. In the present complaint, the grievance of the complainant is neither the respondent handed over the physical possession of the unit nor executing the conveyance deed till date.
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 11(4)(f) and Section 17(1) of the Act of 2016 the promoter is under an obligation to get the conveyance deed executed in favour of the allottees and 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 and execute the conveyance deed within 2 months as per provisions of Section 19(10) and Section 19(11) of the Act, 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
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. The respondent is further directed to execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act, 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of obtaining occupation certificate.
- G.V Direct the respondent to provide the copy of the builder buyer agreement.**
- G.VI Direct the respondent to provide information pertaining to the construction and approvals of the project as per Section 19 of the Act, 2016.**
37. In the present case, the builder buyer's agreement was executed between the parties on 02.06.2017 (stamp duty generated by the parties) and the copy of the builder buyer's agreement has been annexed by the respondent in its reply (R/2,

page 34 to 51 of reply). The Authority observes that the builder buyer's agreement was executed between the parties herein and the respondent is under obligated to provide a signed copy of the builder buyer's agreement to the complainant. In view of the same, the respondent is directed to provide a signed copy of the buyer's agreement within a period of 30 days from the date of this order. Further as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter.

G.VII Direct the respondent to not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the agreement.

38. 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.

G.VIII To imposed penalty to the builder on account of various defaults and illegalities under the Act, 2016 and the same be ordered to be paid to the complainant.

39. 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.
40. 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

41. 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 if any is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit within a period of 30 days from the date of this order. Further, the respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 10.85% 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., 10.85% 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. 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 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, 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.
42. Complaint as well as applications, if any, stand disposed off accordingly.
43. Files be consigned to the registry.

Dated: 04.09.2025
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram